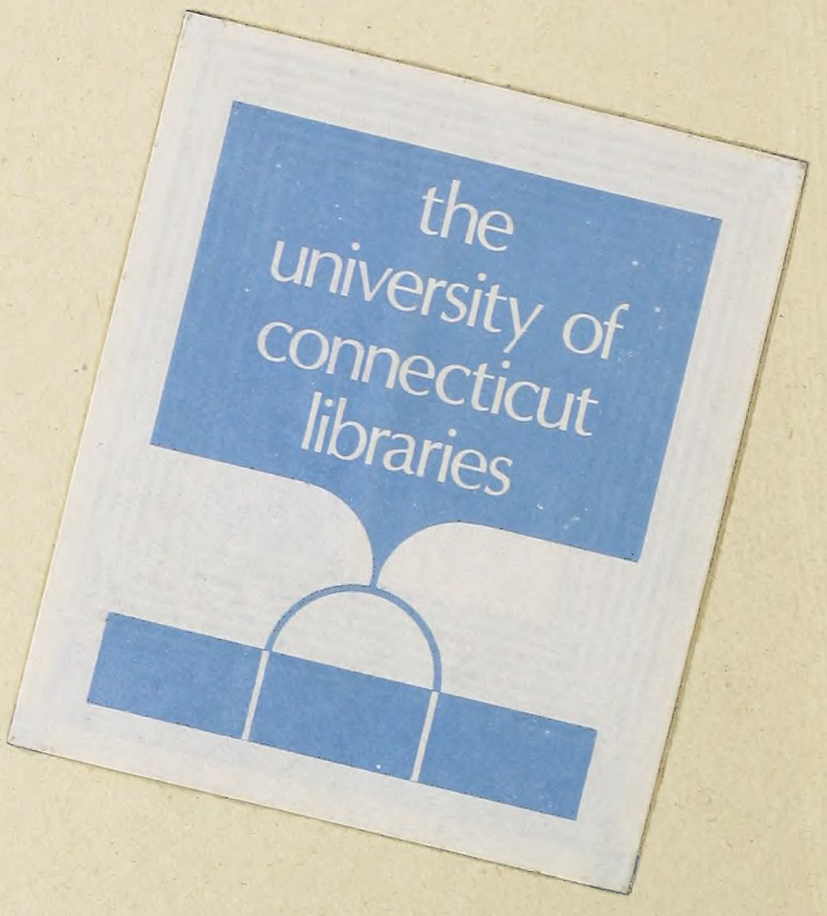
ref, stx KFC3657.P56
v. 1
Connecticut digest, 1785 to date.
3 9153 00853448 1



RESERVED
FOR
REFERENCE
READING

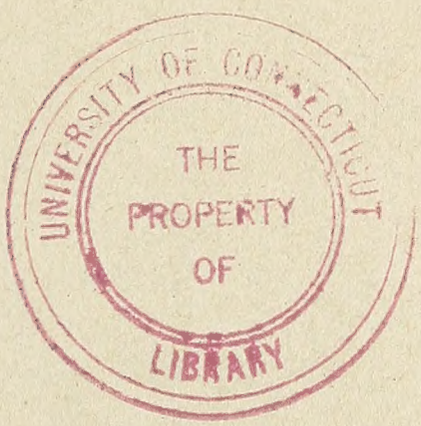
NOT TO BE TAKEN
FROM THE LIBRARY

THIS VOLUME
DOES NOT
CIRCULATE

GOVERNMENT PUBLICATIONS
RECEIVED

MAY 1 1964

WILBUR CROSS LIBRARY
UNIVERSITY OF CONNECTICUT



CONNECTICUT DIGEST

Digitized by the Internet Archive
in 2013

http://archive.org/details/connecticutdiges01phil

REF
KFC
3657
.P56
v.1

CONNECTICUT DIGEST

1785 TO DATE

KIRBY TO VOLUME 129 INCLUSIVE

WITH

Current Cumulative Pocket Parts

BY

RICHARD H. PHILLIPS

REPORTER OF JUDICIAL DECISIONS

VOLUME 1

ABANDONMENT TO EVICTION

PUBLISHED BY THE STATE OF CONNECTICUT

1945

RESERVED FOR REFERENCE READING

NOT TO BE TAKEN FROM THE LIBRARY

Copyright, 1945

BY

CHARLES J. PRESTIA, *Secretary of State*
of the State of Connecticut

PREFACE

This digest is published by authority of § 796f of the Cumulative Supplement of 1941 and will be kept to date by cumulative pocket parts to be issued after each two volumes of Connecticut Reports, as authorized by the 1945 General Assembly.

In arranging the material, the reporter has divided each title into as many subtitles as appeared feasible without making the classifications themselves too complicated. Thus, for example, Automobile has thirty-seven numbered subtitles as against seventeen in the 1934 digest, Evidence has one hundred as against thirty-four, Wills has sixty-nine as against twenty-five. While modern systems of classification in other publications have been studied and used with adaptations, the primary aim has been to devise a scheme for each title suitable to the Connecticut cases and to any peculiarities in Connecticut law.

As authorized by the 1941 statute, the material in previous index digests has been utilized. It has been entirely reclassified. The citations have been verified and the items in the older publications have been considerably amplified through a comparison with the annotations to the General Statutes and other sources. In the older digests less complete statements of the law were given than are currently employed, but this fact has been of advantage in making possible the publication of the entire digest in three volumes. As the law is substantially restated every decade, the lawyer can usually find his authority in the more complete statements used in digesting the later cases, and this will become increasingly true as the supplements become larger.

The table of cases at the end of Volume 3 was prepared, subsequent to his retirement, by William E. Osborn, for fifty years clerk to various reporters of judicial decisions. To it have been added, through the courtesy of the Lawyers Co-operative Publishing Company, citations to the Annotated System for all cases which have been reported therein, a feature that should be of considerable value to the bar. There are also a table of Connecticut cases appealed to the United States Supreme Court and a list of obituaries and biographies published in the reports.

Attorney Anthony F. Gannuscio, messenger of the Supreme Court of Errors, now with the United States Army in the Pacific, gave valuable assistance over a period of eight years in the preparation of the digest, and it has had the benefit of the skillful editorial work of Miss Kathryn Miller, present clerk to the reporter.

RICHARD H. PHILLIPS

*

TITLES IN THE CONNECTICUT DIGEST

(Italics indicate cross-reference titles)

VOLUME 1

ABANDONMENT
ABATEMENT, PLEA IN
ABORTION
ABUSE OF FEMALE CHILD
ABUSE OF PROCESS
Abutting Owners
ACCESSION
Accessory
Accident and Mistake
ACCOMPLICE AND ACCESSORY
ACCORD AND SATISFACTION
ACCOUNTS AND ACCOUNTING
Accretion
Accumulations
Acknowledgment
Acquiescence
ACTIONS
ACT OF GOD
Ademption
Adequate Remedy at Law
ADJOINING LANDOWNERS
Administration of Estates
ADMINISTRATIVE BOARDS AND COMMISSIONS
Administrators
ADMIRALTY
ADOPTION
ADULTERY
Advancements
ADVERSE POSSESSION
AGENCY
Aldermen
Alienation of Affections
Alienation, Restraints on
ALIENS
Alimony
Allowance to Defend
Amendments
Amusement Resorts
Ancillary Administration
ANIMALS
ANNUITIES
Annulment of Marriage
Appeal
APPEAL TO THE SUPREME COURT
APPEARANCE
Appointment
Appraisers
Approximation
Appurtenances
ARBITRATION AND AWARD
ARCHITECTS
Army
ARREST
Arrest of Judgment
ARSON
ASSAULT AND BATTERY
ASSAULT WITH INTENT TO KILL, MURDER, MAIM, RAPE
Assessments
ASSIGNMENT
ASSIGNMENT FOR BENEFIT OF CREDITORS
Associations
Assumpsit
ASSUMPTION OF RISK
ATTACHMENT
ATTORNEY AT LAW
ATTORNEY GENERAL
Audita Querela
Auditors
AUTOMOBILE
Autrefois Acquit and Convict
Award
BAIL
BAILMENTS
Bank Night
BANKRUPTCY
BANKS AND BANKING
Barbers

Bar Examining Committee
BASTARDY
Bathing Resorts
Beach
BENEFICIARY ASSOCIATIONS
Benefits and Damages
Betterments
Bicycle
Bill of Exceptions
BILLS AND NOTES
Bills of Exchange
BILLS OF LADING
Blasting
Board of Examiners in Optometry
Board of Finance and Control
Board of Fire Commissioners
Board of Health
Board of Relief
BOATS
BONA FIDE PURCHASERS
BONDS
Book Debt
Borough Courts
BOUNDARIES
Boy Scouts of America
BREACH OF PEACE
BREACH OF PROMISE
Breaking and Entering with Violence
BRIBERY
BRIDGES
BROKERS
Building Associations
Building Code
Building Contracts
Building Lines
Building Restrictions
BURGLARY
Busses
By-laws
Cancellation of Instruments
Carnal Knowledge
CARRIERS
Cats
Cattle
Caucuses and Primaries
CEMETERIES
CERTIORARI
CHAMPERTY AND MAINTENANCE
Change of Venue
CHARGE TO JURY
Charitable Uses
CHARITIES
Chattel Mortgages
Checks
Children
CHURCH AND ECCLESIASTICAL SOCIETIES
City
Civil Process
CIVIL SERVICE
Clayton Act
Clerk of Court
CLOUD ON TITLE
Coasting
Codicil
Collateral Security
Collector of Taxes
COLLEGES AND UNIVERSITIES
Collision
Comity
Commissioner of Public Works
COMMISSIONERS OF ESTATES
Commissions
Commitment
COMMITTEES AND REFEREES
Common Carriers
Common Council
Common Counts
COMMON LAW
Common Pleas Court
COMPOSITIONS WITH CREDITORS
COMPROMISE AND SETTLEMENT
Comptroller
Condemnation
Conditional Limitation
Conditional Sales
Conditions
Condonation
Confessions
CONFLICT OF LAWS
CONFUSION OF GOODS
CONSERVATORS
Consideration
Consignment
Consignor and Consignee
CONSPIRACY

CONSTITUTIONAL LAW
CONTEMPT OF COURT
Contingent Remainders
Continuance
CONTRACEPTION
CONTRACTS
CONTRIBUTION AND REIMBURSEMENT
Conversion
COPYRIGHT
Coroner
CORPORATIONS
Cosmeticians
COSTS
Counsel Fees
COUNTY
County Commissioners
COURT OF COMMON PLEAS
Court of Probate
COURTS
Covenants
Creditor's Bill
Criminal Conversation
CRIMINAL LAW AND PROCEDURE
Curtesy
Custom
Cy Pres
Dairy and Food Commissioner
DAMAGES
Damnum Absque Injuria
Dangerous Instrumentalities
Date
DEATH
Death Benefit
DEATH BY WRONGFUL ACT
Debt, Action of
Debtor and Creditor
Deceit
Declaratory Judgments
DEDICATION
DEEDS
Default
Default in Appearance
Defeasance
Delivery
DEMAND
Demurrage
DENTISTS
DEPOSITIONS
Descent
Desertion
Devise
Directors
Discharge
Disclosure
Discount
DISCOVERY AND INSPECTION
Discretion
Disqualification
Distribution
DISTRICT COURT OF WATERBURY
Districts
Ditches
DIVORCE
DOCKET
Docks
Dogs
Domicil
DOWER
Drains and Ditches
DRIVING UNDER INFLUENCE OF LIQUOR
Due Process of Law
DURESS
Dying Declarations
Dynamite
EASEMENTS
EJECTMENT
ELECTION OF RIGHTS AND REMEDIES
ELECTIONS AND ELECTORS
ELECTRIC LIGHT AND POWER COMPANIES
Embalmers
EMBEZZLEMENT
Emblements
EMINENT DOMAIN
EQUITABLE CONVERSION
EQUITY
Erasure from Docket
Escape
ESCROW
Estates for Life
ESTATES OF DECEASED PERSONS
ESTATES ON CONDITION
Estates Tail
ESTOPPEL
Eviction

VOLUME 2

EVIDENCE
EXECUTION
Executor de Son Tort
EXECUTORS AND ADMINISTRATORS
Exemplary Damages
Exemptions
Exhibits
Explosives
Extinguishment
EXTRADITION
FACTORS
FAIR TRADE ACT
FALSE ARREST OR IMPRISONMENT
False Pretenses
Family Car Doctrine
Family Settlements
FARM CREDIT ACT
Federal Courts
Federal Employers' Liability Act
Feeble-minded Persons
Fee Tail
Felony
FENCES
FERRIES
FIRE AND OTHER DISTRICTS
Firemen
FIRES
FISH AND GAME
FIXTURES
FLOWAGE ACTS
Forbearance to Sue
FORCIBLE ENTRY AND DETAINER
Foreign Attachment
Foreign Corporations
FOREIGN LAW
FORFEITURES AND PENALTIES
FORGERY
FRANCHISE
Fraternal Benefit Societies
FRAUD
Frauds, Statute of
FRAUDULENT CONVEYANCES
Freight
French Spoliation Claims
Funeral Directors
Gambling
GAMING
Garage
GARNISHMENT
GAS COMPANIES
GASOLINE STATIONS
GENERAL ASSEMBLY
General Average
GIFTS
Governmental Immunity
GOVERNOR
Grade Crossings
GRAND JURORS
GRAND JURY
Growing Crops
GUARANTY
GUARDIAN AND WARD
Guest Statute
HABEAS CORPUS
Hairdressers
Handwriting
Harbors
Harmless Error
Harvard
Health
Health Officers
Hearing in Damages after Default
Highway Commissioner
HIGHWAYS
HOME OWNERS' LOAN ACT
HOMICIDE
Horses
HOSPITALS
Hotels
HOUSES OF ILL FAME
Hunting
HUSBAND AND WIFE
ICE
Illegitimate Children
Implied Contracts
Incorporeal Hereditaments
INDECENT ASSAULT
INDEMNITY
INDEPENDENT CONTRACTOR
Indorsement
INFANTS
Inhabitant

INJUNCTION
INNKEEPERS
INSANITY; PERSONS NON COMPOS MENTIS
Insolvency
Inspection of Documents
INSURANCE
INTENT
INTEREST
INTERPLEADER
Interrogatories
Interstate Commerce
INTOXICATING LIQUOR
Inventions
Invitation and License
Irreparable Injury
Jail
Jail Liberties
Joinder of Causes of Action
JOINT ADVENTURE
JOINT AND SEVERAL LIABILITY
JOINT TENANCY
JUDGES
Judgment by Confession
Judgment Liens
Judgment Notwithstanding Verdict
JUDGMENTS
JUDICIAL SALES
Junk Yards
JURISDICTION
JURY AND JURORS
JUSTICES OF THE PEACE
JUVENILE COURT
KNOWLEDGE
LABOR UNIONS
Laches
LANDLORD AND TENANT
LAND RECORDS
Larceny
Lascivious Carriage
Last Clear Chance
Lateral Support
Law of the Road
Lease
Legal Representatives
Legal Tender
Legislature
Levy
LIBEL AND SLANDER
LICENSES
LIENS
Life Estates
LIFE TENANT AND REMAINDERMAN
Light and Power Companies
LIMITATION OF ACTIONS
Liquor Control Act
LIS PENDENS
Lodge
Lottery
Maintenance
Malice
MALICIOUS PROSECUTION
Malpractice
MANDAMUS
Manslaughter
Maps
MARRIAGE
Marshalling
Masonic Organizations
MASTER AND SERVANT
MAXIMS
Mayor
Mechanics' Liens
MILITARY
MILK
Mill Privileges
MINES AND MINING
MINIMUM WAGE ACT
Minor Court Act
Minors
Misdemeanor
Misjoinder
Misrepresentation
MISTAKE
Mistrial
MITTIMUS
Money Paid by Mistake
MONOPOLIES
Moot Questions
MORTGAGES
Motions
MOTIVE
Motor Vehicles
MUNICIPAL CORPORATIONS
MUNICIPAL COURTS
Murder

NAMES
National Bank
Naturalization
Navigable Waters
NE EXEAT
NEGLIGENCE
Negotiable Instruments
NEW TRIAL
Nonjoinder
Nonnegotiable Instruments
Non Obstante Veredicto
Nonresident
NONSUIT
Nonsupport
NOTICE AND KNOWLEDGE
Notice to Quit
Novation
NUISANCE
OATH
Officers
Officer's Receipt
OLD AGE ASSISTANCE
Options
OPTOMETRISTS AND OPTICIANS
Order of Notice
Ordinances
Osteopaths
OUSTER
Overseer
Ownership
Oyer
OYSTER GROUNDS
PARENT AND CHILD
Parking Stations
PARKS
PARLIAMENTARY LAW
Particeps Criminis
PARTIES
PARTITION
PARTNERSHIP
PARTY WALLS
Passengers
PATENTS AND INVENTIONS
PAUPERS
PAYMENT
Penalties
PENSIONS
Performance
PERJURY
PERPETUITIES
PERSONAL PROPERTY
Physical Examination
PHYSICIANS AND SURGEONS
Picketing

VOLUME 3

PLEADING
Plea in Abatement
Plea to the Jurisdiction
PLEDGE
Police Officers
Police Power
Ponds
POOR DEBTORS
POSSESSION
POWERS
Practice Act
Preference
Prescription
Presumptions
Principal and Surety
PRISONS
Privileged Communications
Privity of Title
Probable Cause
PROBATE COURT
Probation
PROCESS
Production of Documents
PROHIBITION
Protest
Proximate Cause
Public Documents
PUBLIC HEALTH
PUBLIC OFFICERS
PUBLIC POLICY
PUBLIC UTILITIES COMMISSION
PUBLIC UTILITY COMPANIES
Quantum Meruit
Quasi and Implied Contracts
QUESTIONS OF LAW AND FACT
Quieting Title
Qui Tam Actions
QUO WARRANTO

RAILROAD COMMISSIONERS
RAILROADS
Railways, Street
RAPE
Ratification
Real Estate Brokers
Real Estate Contracts
REAL PROPERTY
Receipt
RECEIVERS
Receiving Stolen Goods
Reckless Driving
Reckless Misconduct
Recognizance
Record, Amendment of
RECORDS
Recoupment
Referees
REFORMATION OF INSTRUMENTS
REFORMATORIES
Registrar of Voters
Reimbursement
RELEASE AND DISCHARGE
Religious Societies
Remainders
Remittitur
Remonstrance
REMOVAL OF CAUSES
REPLEVIN
Reprieve
Res Adjudicata
Reservations
Res Gestae
RESIDENCE AND DOMICIL
Res Ipsa Loquitur
Restaurants
Restitution
Restoration to Docket
Restraint of Trade
Restraints on Alienation
Retention of Possession
Retirement
Retrospective Laws
REWARDS
Right of Way
Riparian Owner
River
ROBBERY
Robinson-Patman Act
Rule in Shelley's Case
SALES
Sanatorium
Satisfaction
SCHOOLS AND SCHOOL DISTRICTS
SCIRE FACIAS
SEALS
SEARCH AND SEIZURE
Search Warrant
Seashore
Seaweed
SEDUCTION
Selectmen
Sentence
Separate Estate
Service and Return of Civil Process
SET-OFF, RECOUPMENT AND COUNTER-CLAIM
Settlement
Settling Title
SEWERS
Sheep
Sheriff
Sherman Act
Ships and Shipping
Sidewalks
Silence
Situs
Slander
Slave
Small Loans Act
Snow and Ice
Societies
Soldiers
Soliciting Money for Religious Cause
Special Finding
SPECIFIC PERFORMANCE
SPECIFIC RESTITUTION
STATE
State Prison
STATE REFEREES
STATE'S ATTORNEYS
Statute against Perpetuities
Statute of Charitable Uses
STATUTE OF FRAUDS
Statute of Limitations
STATUTES

Stay of Proceedings
Stockbrokers
Stoppage in Transit
Stores
Storm
Streams
STREET RAILWAYS
Streets
Strikes
Subpoena
Subpoena Duces Tecum
SUBROGATION
SUBSCRIPTIONS
Substitution of Parties
Succession
Suicide
Summary Process
SUNDAY AND SUNDAY LAWS
SUPERIOR COURT
Supersedeas
SUPREME COURT REPORTS
SURETYSHIP
Surface Water
Survival of Actions
Survivorship
Talesmen
TAXATION
Taxicabs
Teachers
TELEPHONE AND TELEGRAPH COMPANIES
TENANTS IN COMMON
TENDER
Tenement
Tenure of Office
Terms and Sessions
Theaters and Shows
THEFT
Third Party Beneficiaries
TIME
TITLE AND OWNERSHIP
Toll
TORTS
Town, City and Borough Courts
Town Clerk
Towns
Trade Acceptances
TRADE-MARKS AND TRADE-NAMES
Transfer of Causes
TREES
TRESPASS
TRIAL
Trolley Cars
TROVER AND CONVERSION
Trustee Process
TRUST RECEIPTS
TRUSTS
Turnpike
Ultra Vires
UNDUE INFLUENCE
UNEMPLOYMENT COMPENSATION ACT
Unfair Sales Practice Act
Uniform Trust Receipts Act
UNITED STATES
Universities
Unjust Enrichment
USAGE AND CUSTOM
Use and Occupation
USURY
Vaccination
Validating Acts
Value
Variance
VENDOR AND PURCHASER
VENUE
VERDICT
Vested Remainders
VESTED RIGHTS
Veterans
Vexatious Suit
Viewing the Premises
VOLUNTARY ASSOCIATIONS
VOLUNTEERS
Votes
Wages
WAIVER
WANTON, WILFUL AND RECKLESS MISCONDUCT
War
Ward
War Department
War Risk Insurance
WAREHOUSEMEN
WARRANT
WASTE

Water District
WATERS
WATERWORKS
Ways
Wells
Wharves
Widow
Wilful Misconduct
WILLS
Withdrawal of Actions
Witnesses
WORDS AND PHRASES
WORKMEN'S COMPENSATION
WRIT OF ERROR
Writs
Wrongful Death
Yale University
ZONING

Page

OBITUARIES AND BIOGRAPHIES 2253
CONNECTICUT CASES APPEALED TO UNITED STATES SUPREME COURT 2257
TABLE OF CASES REPORTED 2261

DIGEST

OF

CONNECTICUT REPORTS

KIRBY—VOLUME 129

ABANDONMENT

§ 1. In General; of Real or Personal Property
2. Miscellaneous Cases

Note: Cases concerning abandonment of easements are listed under Easements § 8; of highways, under Highways § 7; of railroads, under Railroads § 2.

See also Husband and Wife; Parent and Child; Mortgages

§ 1. In General; of Real or Personal Property

of ship is unnecessary where profits are insured and loss is total, 3 D 118

——or in case of utter destruction of the thing insured, 1 C 200

what must exist to justify an abandonment of ship to insurers, 1 C 201, 425

purchase of ship by owner after abandonment at fair, open sale is not waiver of it, 1 C 202

acceptance of the abandonment by the insurers is not essential to its validity, 1 C 203

after an abandonment of ship the captain and crew become agents of insurers, 1 C 204

of voluntary unincorporated association by member is an abandonment of his interest in its personal property, 19 C 154

manure dropped by animals on highway *held* abandoned property, 37 C 506

of common lands; sufficiency of the evidence is a question for the jury, 38 C 564

——merely inclosing rough pasture land by fence *held* insufficient evidence of occupation, 38 C 564

to constitute an abandonment of land there must be an intent to abandon, 42 C 384

——accompanied by some act by which the land is actually abandoned, 42 C 384

——circumstances *held* insufficient to show abandonment by town, 42 C 384

rights of owners in old dam *held* not abandoned by their acquiescence in erection of new dam used like old one, 51 C 7

is a question of fact and intent; a second foreign attachment based on judgment obtained on first is not an abandonment of lien acquired by first process, 56 C 443

conduct *held* to raise presumption of abandonment by assignees and creditors of insolvent's insurance policies, 61 C 249

when property is lost or abandoned, 89 C 564

of inchoate and equitable interests in land, not impaired by subsequent quitclaim deed nor a transfer within Statute of Frauds, 90 C 555

by customer, of title to stock bought for him by broker on margin, 101 C 119

by bailor, of article left for repairs and rendered useless to her, 103 C 686

while eminent authority holds that legal title to land by grant cannot be abandoned, that principle does not include incidental rights in land though resting in grant, as a mortgage, 110 C 374

abandonment where holder of mortgage intending to discharge it did in fact destroy it, with note, 110 C 374

——thereafter it could not be enforced, 110 C 374

a debt may be abandoned, 110 C 378

conditional vendee abandons interest in cows attached by refusing to receive them back, 111 C 299

requires intent and external act carrying it into effect; when both exist, it becomes matter of law, 111 C 299

nonuser of pumping station would not work abandonment of rights previously acquired, 111 C 352
abandonment of ice plant after commissioner of health forbade its use did not impair plaintiff's right of action for pollution of pond, 114 C 496
so long as it remains possible to carry out original purpose of development, each purchaser of lot has right to protection of restrictions in absence of laches, waiver or abandonment, 117 C 176
where conditional vendor failed to give instructions to attorney to redeem car seized for illegal transportation of liquor *held* he abandoned it, though attorney redeemed in vendor's name on behalf of another, 118 C 220
——and vendor forfeited his right to reclaim, 118 C 220
where quitclaim recited intention to release grantor's half-interest in mortgage it constituted abandonment of debt though note was not indorsed or delivered, 118 C 635
abandonment is question of fact, 121 C 43, 123 C 428, 125 C 227
cotenant *held* not to have abandoned right to retain interest in property by failing to contribute to expense of redemption of mortgage by another tenant, 122 C 406
——determinative element in abandonment is intent, 122 C 409
in this State mortgagee may abandon his right of security under the mortgage, 125 C 227
——dissenting opinion holds that abandonment only applies to easements and incorporeal hereditaments, 125 C 236
in general sense is intentional relinquishment of a known right, 125 C 232
——intention must be accompanied by some act or omission by which it is manifested, 125 C 227
——while nonuser and lapse of time alone are not enough they are competent evidence of intent and may be of great weight, 125 C 227
——abandonment may be inferred from circumstances, or presumed from long continued neglect, 125 C 227

§ 2. Miscellaneous Cases

plaintiff may orally abandon a part of his complaint for libel, 4 C 27
——defendant not permitted to justify the charges so abandoned, 4 C 29
of builder's contract; evidence *held* to tend to prove such abandonment, 19 C 310
of antenuptial contract; technical evidence not required, 20 C 167
what constitutes an abandonment of wife by husband, 27 C 16, 25
of conspiracy to escape prison; law applicable to such claim stated, 47 C 138
of party's original intent to use mill site is a question of fact, 49 C 350
party's absolute refusal to perform his contract is equivalent to an abondonment, 54 C 328
conduct equivocal or of doubtful import is insufficient to show abandonment of contract, 59 C 556
——also mere deviations from contract, unless it is clear that both parties intend to set it aside, 59 C 556
is question of fact; abandonment of clause in contract, 89 C 175, 92 C 350
of one spouse by the other; what constitutes, 90 C 210
alleged abandonment of criminal conspiracy; charge of court *held* correct, 97 C 330
of appeal, by failure to pursue it, 97 C 392
of rights under claimed construction of will, by many years' acquiescence in different disposition of property, 99 C 656
by husband or wife as forfeiting rights in other's estate, 107 C 101
——intent need not exist at moment of separation but may be formed afterwards, 107 C 101
——presents question of fact, 107 C 101
duty of husband to support wife suspended by her unjustifiable abandonment, 107 C 101
payments by husband do not of necessity negative abandonment by wife, 107 C 101
finding conclusive that police officer, wrongfully suspended and performing no duties, had not abandoned office, 107 C 451
voluntary surrender of medical license to grand jury and admission of fraud *held* as effectual as a revocation, 108 C 86
abandonment of crime, what constitutes, 110 C 303
——cannot occur after crime of attempt to commit has been consummated, 110 C 303
——law takes no cognizance of mental purpose, or even of words, unless supported by conduct, 110 C 303
abandonment of conflict by accused who kills assailant requires substantial acts reasonably showing it to be real, not feigned, 113 C 210
——where accused, while running away after firing two shots, continued to hold revolver and shot again, no abandonment proved, 113 C 210
liability to pay alimony based upon duty of husband to continue to support wife whom he has, in legal effect, abandoned, 116 C 632
abandonment of child by parents as emancipating him; effect on settlement, 119 C 380

church which merged with others in united church, though technically dissolved, did not abandon purpose for which it was created within meaning of will, 120 C 27
even though husband and wife separate by mutual consent, abandonment may take place within Statute of Distributions if after separation surviving spouse evinces intent not to resume marital relationship, 123 C 425
remark of counsel in colloquy with court de request to charge on wanton misconduct, close to abandonment of claim, 127 C 80
"discontinue" equivalent to abandonment, 127 C 241
time not essential element though it is evidential, 127 C 241

ABATEMENT, PLEA IN

§ 1. In General
2. Miscellaneous Cases
3. Disability of Parties
4. Nonjoinder and Misjoinder
5. Defective Writ
6. Defective Service
7. Another Action Pending
8. In Supreme Court
9. Essentials and Form
10. Time; Waiver

See also Docket

§ 1. In General

judgment on plea in abatement overruled should be respondeat ouster, 1 R 192, 2 R 125
a plea in abatement is not always the only mode of quashing a writ, 6 C 140
improper allowance of amendment cannot affect defendant's right to plead in, 9 C 478
plea in abatement is entitled to receive a reasonable construction, 13 C 527, 45 C 479
——is aided by provisions of statute, 34 C 180, 45 C 479, 60 C 371
lies to part of writ where cause is divisible, 17 C 415, 24 C 535
is entitled to little favor in any court, 32 C 96
plea in abatement to be strictly construed, 34 C 180
statute de abatement of pleadings does not affect right to demur, 40 C 158
no appeal lies from adverse decision on, by justice in bastardy case, 53 C 525
——but defendant is permitted by our practice to renew the objection in higher court, 53 C 526
cause not legally removable to federal court is not abated merely because in form removed there, 54 C 32
——nor is the cause thereby erased in legal contemplation from docket of state court, 54 C 32
in construing, ordinary import of language adopted; need not anticipate reply, 64 C 76
amending plea in abatement, 68 C 474, 74 C 125
plea to jurisdiction unnecessary if record fails to show whatever is essential to confer it, 72 C 430
pleas in, are not favored, 73 C 428, 74 C 126
will not be aided by inference, 79 C 526
good faith of assignment to plaintiff could not be determined on plea in abatement, 85 C 260
ordinarily does not go to merits of action, but may, 85 C 263
renewal of, in Common Pleas, if overruled by justice, 85 C 327
matter of abatement may be raised by motion to quash writ of mandamus, when, 90 C 638
where defect in proceedings arises from facts not appearing on face of papers, plea in abatement or to jurisdiction is proper way to raise it, not motion to erase, 97 C 123
plea to jurisdiction may raise question of law, if allegations of complaint assumed to be true, 104 C 206
plea in abatement, not motion, proper way to attack appeal to Superior Court, where affirmative facts must be proved or defect is in manner of taking appeal, as where it was not taken within time allowed, 104 C 352
refusal to try issues of fact raised in plea to jurisdiction after demurrer thereto sustained, *held* not a denial of due process, 107 C 545
plea not aided by inference or intendment, 108 C 436
pleas in abatement regarded with little favor, 108 C 451
judgment upon plea in abatement carriers costs, 113 C 770
——hence party specially appearing may ask bond for costs, 113 C 770

nonuser of pumping station would not work abandonment of rights previously acquired, 111 C 352
abandonment of ice plant after commissioner of health forbade its use did not impair plaintiff's right of action for pollution of pond, 114 C 496
so long as it remains possible to carry out original purpose of development, each purchaser of lot has right to protection of restrictions in absence of laches, waiver or abandonment, 117 C 176
where conditional vendor failed to give instructions to attorney to redeem car seized for illegal transportation of liquor *held* he abandoned it, though attorney redeemed in vendor's name on behalf of another, 118 C 220
——and vendor forfeited his right to reclaim, 118 C 220
where quitclaim recited intention to release grantor's half-interest in mortgage it constituted abandonment of debt though note was not indorsed or delivered, 118 C 635
abandonment is question of fact, 121 C 43, 123 C 428, 125 C 227
cotenant *held* not to have abandoned right to retain interest in property by failing to contribute to expense of redemption of mortgage by another tenant, 122 C 406
——determinative element in abandonment is intent, 122 C 409
in this State mortgagee may abandon his right of security under the mortgage, 125 C 227
——dissenting opinion holds that abandonment only applies to easements and incorporeal hereditaments, 125 C 236
in general sense is intentional relinquishment of a known right, 125 C 232
——intention must be accompanied by some act or omission by which it is manifested, 125 C 227
——while nonuser and lapse of time alone are not enough they are competent evidence of intent and may be of great weight, 125 C 227
——abandonment may be inferred from circumstances, or presumed from long continued neglect, 125 C 227

§ 2. Miscellaneous Cases

plaintiff may orally abandon a part of his complaint for libel, 4 C 27
——defendant not permitted to justify the charges so abandoned, 4 C 29
of builder's contract; evidence *held* to tend to prove such abandonment, 19 C 310
of antenuptial contract; technical evidence not required, 20 C 167
what constitutes an abandonment of wife by husband, 27 C 16, 25
of conspiracy to escape prison; law applicable to such claim stated, 47 C 138
of party's original intent to use mill site is a question of fact, 49 C 350
party's absolute refusal to perform his contract is equivalent to an abondonment, 54 C 328
conduct equivocal or of doubtful import is insufficient to show abandonment of contract, 59 C 556
——also mere deviations from contract, unless it is clear that both parties intend to set it aside, 59 C 556
is question of fact; abandonment of clause in contract, 89 C 175, 92 C 350
of one spouse by the other; what constitutes, 90 C 210
alleged abandonment of criminal conspiracy; charge of court *held* correct, 97 C 330
of appeal, by failure to pursue it, 97 C 392
of rights under claimed construction of will, by many years' acquiescence in different disposition of property, 99 C 656
by husband or wife as forfeiting rights in other's estate, 107 C 101
——intent need not exist at moment of separation but may be formed afterwards, 107 C 101
——presents question of fact, 107 C 101
duty of husband to support wife suspended by her unjustifiable abandonment, 107 C 101
payments by husband do not of necessity negative abandonment by wife, 107 C 101
finding conclusive that police officer, wrongfully suspended and performing no duties, had not abandoned office, 107 C 451
voluntary surrender of medical license to grand jury and admission of fraud *held* as effectual as a revocation, 108 C 86
abandonment of crime, what constitutes, 110 C 303
——cannot occur after crime of attempt to commit has been consummated, 110 C 303
——law takes no cognizance of mental purpose, or even of words, unless supported by conduct, 110 C 303
abandonment of conflict by accused who kills assailant requires substantial acts reasonably showing it to be real, not feigned, 113 C 210
——where accused, while running away after firing two shots, continued to hold revolver and shot again, no abandonment proved, 113 C 210
liability to pay alimony based upon duty of husband to continue to support wife whom he has, in legal effect, abandoned, 116 C 632
abandonment of child by parents as emancipating him; effect on settlement, 119 C 380

church which merged with others in united church, though technically dissolved, did not abandon purpose for which it was created within meaning of will, 120 C 27
even though husband and wife separate by mutual consent, abandonment may take place within Statute of Distributions if after separation surviving spouse evinces intent not to resume marital relationship, 123 C 425
remark of counsel in colloquy with court de request to charge on wanton misconduct, close to abandonment of claim, 127 C 80
"discontinue" equivalent to abandonment, 127 C 241
time not essential element though it is evidential, 127 C 241

ABATEMENT, PLEA IN

§ 1. In General
2. Miscellaneous Cases
3. Disability of Parties
4. Nonjoinder and Misjoinder
5. Defective Writ
6. Defective Service
7. Another Action Pending
8. In Supreme Court
9. Essentials and Form
10. Time; Waiver

See also Docket

§ 1. In General

judgment on plea in abatement overruled should be respondeat ouster, 1 R 192, 2 R 125
a plea in abatement is not always the only mode of quashing a writ, 6 C 140
improper allowance of amendment cannot affect defendant's right to plead in, 9 C 478
plea in abatement is entitled to receive a reasonable construction, 13 C 527, 45 C 479
——is aided by provisions of statute, 34 C 180, 45 C 479, 60 C 371
lies to part of writ where cause is divisible, 17 C 415, 24 C 535
is entitled to little favor in any court, 32 C 96
plea in abatement to be strictly construed, 34 C 180
statute de abatement of pleadings does not affect right to demur, 40 C 158
no appeal lies from adverse decision on, by justice in bastardy case, 53 C 525
——but defendant is permitted by our practice to renew the objection in higher court, 53 C 526
cause not legally removable to federal court is not abated merely because in form removed there, 54 C 32
——nor is the cause thereby erased in legal contemplation from docket of state court, 54 C 32
in construing, ordinary import of language adopted; need not anticipate reply, 64 C 76
amending plea in abatement, 68 C 474, 74 C 125
plea to jurisdiction unnecessary if record fails to show whatever is essential to confer it, 72 C 430
pleas in, are not favored, 73 C 428, 74 C 126
will not be aided by inference, 79 C 526
good faith of assignment to plaintiff could not be determined on plea in abatement, 85 C 260
ordinarily does not go to merits of action, but may, 85 C 263
renewal of, in Common Pleas, if overruled by justice, 85 C 327
matter of abatement may be raised by motion to quash writ of mandamus, when, 90 C 638
where defect in proceedings arises from facts not appearing on face of papers, plea in abatement or to jurisdiction is proper way to raise it, not motion to erase, 97 C 123
plea to jurisdiction may raise question of law, if allegations of complaint assumed to be true, 104 C 206
plea in abatement, not motion, proper way to attack appeal to Superior Court, where affirmative facts must be proved or defect is in manner of taking appeal, as where it was not taken within time allowed, 104 C 352
refusal to try issues of fact raised in plea to jurisdiction after demurrer thereto sustained, *held* not a denial of due process, 107 C 545
plea not aided by inference or intendment, 108 C 436
pleas in abatement regarded with little favor, 108 C 451
judgment upon plea in abatement carriers costs, 113 C 770
——hence party specially appearing may ask bond for costs, 113 C 770

where want of jurisdiction appears on face of record, motion to erase rather than plea in abatement correct procedure, 114 C 582
under common-law rule when plea to jurisdiction and plea in abatement were filed simultaneously, former was regarded as superseded by latter, 121 C 343
when Practice Act was adopted it provided that if defendant desired to plead to jurisdiction and in abatement he should do so in one plea, 121 C 343
——and our rules do not distinguish between the two, 121 C 343
——plea to jurisdiction is not improper but a plea in abatement may raise any issue going to the jurisdiction of the court, 121 C 343
statute granting right to new action within year where original action failed to be tried on merits because writ was abated, does not apply to appeal from zoning board, 126 C 603
where plea in abatement was properly sustained, it is of no consequence that court placed its decision on another ground, 126 C 653

§ 2. Miscellaneous Cases

entrance by plaintiff on demanded premises pending action is no ground of, 1 R 73
that respondent inhabitant of another State here transiently at time served, not sufficient ground to abate petition, 1 C 154
not a ground of, that one appeal is taken from two probate decrees, 6 C 358
omission of bond on appeal is ground for, only, 22 C 106
failure of justice to appoint guardian ad litem is no ground for, after appeal, 25 C 206
omission of constable to give bond cannot be pleaded in abatement, 25 C 278
sole remedy where suit was brought on probate bond without consent of Probate Court, 45 C 118
claiming that proceedings are under statute giving no right of appeal, 71 C 270
appealing from justice court to wrong return day, 77 C 38
irregularities in appeal from commissioners on insolvent estates, 79 C 579
where there is doubt as to jurisdiction of administrative board, motion to dismiss the proceeding before it for want of jurisdiction should be denied, 85 C 517
where plea in abatement to writ of error insufficient, demurrer thereto sustained, 87 C 614
personal bias of state's attorney not ground for, 88 C 448
that suit is premature can only be raised by, 92 C 380
irregularities in taking appeal from probate, 107 C 354
sustaining demurrer to, was harmless error where property of nonresident was attached though complaint did not show it, since the fact was proved on the trial, 111 C 124
in nonsupport action *held* properly overruled, 111 C 124
defense of Statute of Limitations is to be raised by answer or demurrer; plea to jurisdiction not proper, 114 C 731
one of essentials of valid appeal from probate is fact that appellant is aggrieved, 120 C 405.
——and this question is properly raised by a plea to the jurisdiction, 120 C 405
——so where appellee filed plea to jurisdiction on ground that appellant was not grandson, hence not heir-at-law and not aggrieved by order of distribution, court properly decided this question as preliminary to all others, 120 C 405
as regards a separate action to enforce liability of an individual stockholder, amount in demand would be amount claimed due from him, 121 C 220
——same limitations of jurisdiction apply as regards power of court to give a several judgment against several defendants in single action, 121 C 220
——so plea to jurisdiction of defendant against whom damages of $200 were sought properly sustained, 121 C 220
is approriate remedy for an irregularity in taking appeal to wrong term, 122 C 151
power of court to enter deficiency judgment after the ninety days fixed by statute does not involve question of jurisdiction, since judgment entered after time limited by statute though erroneous is not void, 122 C 452
——plea to jurisdiction denied, 122 C 452
nonresident sons of nonresident decedent who left property to trustee to pay income to them for life did not have such right in money due to ancillary administrator on judgment recovered in this State as to give Superior Court jurisdiction, on garnishment of such administrator, in suit here against sons, 127 C 107
claim that action did not lie because contempt procedure was more appropriate, should have been raised by, 127 C 150

§ 3. Disability of Parties

that one of plaintiffs is an alien enemy is ground for; coplaintiff allowed to amend by striking out such party's name, 1 R 86
legislative privilege of defendant is a ground for, 4 D 131
ground for, if infant sues only in his own name, 2 C 361
at common law, marriage of feme sole coplaintiff pending suit was ground for, 15 C 569

——changed by statute; husband must enter at first term, 15 C 569
sole remedy for objections to character or capacity of plaintiff, 27 C 288
whether suit against solvent estate represented and settled as an insolvent one abates under statute, quaere, 51 C 20
failure of nonresident plaintiff to give bond required by statute is ground for, 51 C 327
——may be waived by defendant by voluntarily submitting to jurisdiction without objection, 51 C 327
nonresident is privileged from suit while attending court here as a party defendant, 51 C 595
that plaintiff is clerk of court in which action is brought, not ground for; mere fact that clerk had opportunity to do wrong insufficient, 64 C 132
death of defendant after judgment does not abate suit, 85 C 573
action may be, but not required to be, maintained by real party in interest, 108 C 173

§ 4. Nonjoinder and Misjoinder

ground for, that one only of several respondents brings writ of error to reverse decree, 3 D 144
sole remedy for nonjoinder of joint possessor in trespass quare clausum fregit, 14 C 270, 17 C 415
sole remedy for nonjoinder of one properly coplaintiff in action ex delicto, 15 C 304
sole remedy for nonjoinder of defendants in actions ex contractu, 24 C 535, 27 C 44, 38 C 272, 48 C 39
——except where declaration shows the omission, when motion in arrest will lie, 27 C 44, 48 C 39
nonjoinder of codefendant in equity waived by proceeding to trial without objection, 26 C 308
plea in abatement for nonjoinder need not aver matter of record, 27 C 47
plea in, for nonjoinder must aver that codebtor is living, 48 C 40
objection to nonjoinder to be made before trial on merits, 75 C 278
misjoinder of hundreds of liquor licensees seeking rebate on fees, *held* not a ground for, 99 C 381
plea in, cannot be used to attack misjoinder or nonjoinder of parties, 107 C 697
action by receiver of nonresident joint stock land bank joining as defendants stockholders residing in different counties, 121 C 220
to single appeal from allowance of claims by commissioners on insolvent estate, sustained, 122 C 242

§ 5. Defective Writ

plea in abatement allowed as often as writ is amended, K 5
no ground for, that plaintiff alone gave bond, 2 D 227
lies for a material alteration of writ after its issue, if bond is required and is given, 2 C 379
——also in all cases of attachment of property, 2 C 379
——an alteration in the date or the court to which it is returnable is material, 2 C 379
noncompliance with requirements of statute de direction of writ to indifferent person is ground for, 6 C 140
——but court may ex officio dismiss the writ without a plea in, 6 C 140
no ground for, that bond is defective if defendant is not thereby injured, 7 C 290
lies for the omission of the hour for trial before justice, 16 C 44
want of bond where plaintiff is a nonresident is pleadable only in abatement, 16 C 574, 51 C 327
——objection may be waived if defendant voluntarily submits to jurisdiction, 51 C 327
writ signed by commissioner in his own suit is abatable, 47 C 320, 576
——but objection is waived by failure to urge it for two years, 47 C 576
misdescription of court *held* too slight to afford ground for, 60 C 370
——especially after filing a plea to the merits, 60 C 370
omission of affiant's name in copy of replevin writ served on defendant not ground for, 65 C 539
patent error in date of summons in summary process not ground for, 70 C 348
bond noted on writ in unusual form sustained, 73 C 538
change of return day in writ after issuance, is ground for, 74 C 38
failure of authority signing bastardy writ directed to indifferent person to certify as to oath, ground for, 85 C 327
want of recognizance is ground for, 90 C 639
want of verification in mandamus is ground for, 90 C 639
that defendant misdescribed in writ does not abate action, 105 C 640
failure of obligors in replevin bond to enter into and sign it before authority signing writ, ground for, 111 C 112
in habeas corpus plea on ground that there was no recognizance for costs properly overruled, 113 C 737

§ 6. Defective Service

upon one defendant in action ex delicto not ground for, by codefendants, 1 R 408, 4 C 93

an absconding debtor cannot plead in abatement that the person served with copy was not his agent, 2 R 172
lies by company sued, where summons was served only on a stockholder, 3 D 441
does not lie by nonresident defendant in equity personally served in this State, 1 C 165
lies by resident defendant in equity who is served with the bill but not the summons, 3 C 202
lies by joint defendants in action ex contractu for service upon one only, 4 C 426
service on former officers of company who fraudulently resigned to prevent suit affords defendant no ground for, 20 C 457
allegations of, following Swift's form *held* sufficiently precise, 30 C 90
lies for nonattestation of copy left in service by officer, 31 C 396
lies by defendant in action on contract for want of service on codefendant, 45 C 477
demurrer to plea because it failed to state why service on resident director of corporation was defective, properly sustained, 69 C 283
where service defective if both defendants live in New Haven, plea failing to allege such residence invalid even though writ describes defendants as of New Haven, 73 C 559
effect of abatement for want of service on nonresident defendant, 76 C 628
effect of nonservice on one of several defendants, 76 C 628
where no process was served on defendant, and on garnishee six days before return day where twelve was required, *held* action is abatable, 113 C 770
in bastardy proceedings, on ground that service made by leaving complaint at usual place of abode, without arresting body, properly overruled, 118 C 304
granted where service was made on vice-president of voluntary association, statute specifying "presiding officer," 125 C 490

§ 7. Another Action Pending

pendency of cross suits for like cause is not ground for, 1 R 155, 471
when first suit is ineffectual it is not ground for, 1 R 355, 18 C 293, 20 C 515
——otherwise when first suit is defective for a mere informality, 29 C 519
pendency of two suits is a ground for the abatement of each, when, 8 C 78
pendency of bill in equity in court of another State is not a ground for, 22 C 494
——earlier case to the contrary in 1 C 154 overruled, 22 C 494
omission to plead in justice trial the pendency of suit in higher court, is no waiver of right to plead the justice judgment in bar of further continuance of suit in higher court, 47 C 330
other suit must be between same parties, of same character and for same purpose, 50 C 326
oral testimony admissible to show that second suit is for same claim, 54 C 255
——complaints may differ in form and yet the two actions be for the same claim, 54 C 255
an entire claim cannot be divided and made subject of several suits, 68 C 458
——if several suits be brought for different parts of such a claim, pendency of first may be pleaded in abatement of others, 68 C 458
two causes of action may grow out of one transaction; not ground for abatement to bring a separate suit for each cause, 68 C 473
——where prior action for same cause is pending, 68 C 473
pendency of prior action for same cause is ground for, 76 C 547, 82 C 2
another action pending will not prevent plaintiff from pursuing several remedies when reasonably necessary, 105 C 679
action under statute against debtor who has concealed his property not abatable because of prior action on common counts to collect same debt, 105 C 679
pendency of ejectment action ground for abatement of another action involving title, 108 C 173
bringing of action on same cause of action in another State not ground of abatement, 110 C 535
——each may proceed to judgment, but satisfaction of either discharges both, 110 C 535
rule that pendency of one action is ground to abate another between same parties involving same issues, 121 C 388
——will not be applied when to do so would deprive creditor of use in a fair manner of any proper remedy, 121 C 388
——at least when plaintiff in second action has not instituted earlier proceeding, he will not be deprived of any substantial right law gives him to collect debt, 121 C 388
where beneficiary of trust claims breaches by trustee and demands accounting, to deny him right to prosecute action in ordinary courts because of probate proceedings in final account would be to deprive him of rights law gives him, 121 C 388
——such as right to jury trial, to attach property, etc., 121 C 388

§ 8. In Supreme Court

a writ of error from an interlocutory judgment will abate, 1 R 181, 290, 1 D 27, 21 C 284, 24 C 390, 28 C 465
——also where one only of several respondents brings writ of error to reverse decree, 3 D 144

——also motions in error from same, 21 C 284, 24 C 390
——also an appeal from same to Supreme Court, 63 C 576
Supreme Court will try an issue of fact on a plea in abatement of original process brought before it, 41 C 187
plea lies in Supreme Court where reasons of appeal are not properly filed, 54 C 117
does not lie by appellee after judgment of ouster in quo warranto on the ground that he is in undisturbed possession of office, 63 C 180
——unless the validity of such judgment has become immaterial, 63 C 181
——facts *held* not to afford sufficient ground for plea in, by appellee, 63 C 181
does not lie for failing to include claims of law in request for finding, 66 C 551
appeal to term already past, 67 C 19
allowance by clerk of appeal from judge as special statutory tribunal, 68 C 418
for not stating time and place of sitting, 70 C 329
pleas in, not favored, 73 C 428
defect of parties; plea in abatement is proper method, 73 C 432
appeal to wrong return day, 74 C 438, 83 C 134
requisites where for failure to appeal to Supreme Court within time allowed, 79 C 526, 82 C 376, 85 C 619, 89 C 667
will not be aided by inference, 79 C 526
if neither time nor place of holding court, nor that it is the next term after judgment, be alleged, appeal is abatable, 82 C 386
if an appeal from motion for new trial is abatable, it remains so, though joined with a good appeal from final judgment, 82 C 386
no reason to amend appeal to purport return to earlier term since expired, 82 C 386
determination of, in Supreme Court, carries costs, 82 C 483
answer to, in Supreme Court, cannot deny facts of record, 83 C 316
does not lie to secure erasure of an alleged error in an appeal, 83 C 466
writ of error abated unless served thirty days before sitting of Supreme Court, in the same manner as civil process, 85 C 375
attacking writ of error, 87 C 608
when motion to dismiss or erase is proper remedy; and when plea in abatement, 104 C 352
failure to appeal within time limited must be attacked by plea of abatement, 107 C 365
writ of error not abatable because attorney for plaintiff recognized for costs, 108 C 93
though not party of record, person considered such where appearance entered and so treated by court and plaintiff, 109 C 329
proper way to raise question whether appeal was seasonably taken, 112 C 597
granted in Supreme Court for failure to file assignment of errors with appeal where no request for finding made, 113 C 780
in Supreme Court, on ground that sum involved is small, denied, 114 C 707
failure to file assignment of errors within time provided is not ground for plea in abatement; remedy is motion to erase from docket, 116 C 160
plea in abatement in Supreme Court goes to the validity of appeal, not to failure to prosecute valid appeal, 116 C 160
failure of defendant to pay alimony in accordance with decree appealed from is not ground for plea in abatement in the Supreme Court, 116 C 632
appeal not taken in time allowed is voidable on plea in abatement, 119 C 442
——but where no plea filed appeal treated on merits, 119 C 442
plea to jurisdiction based on fact that recognizance by defendant provided that "plaintiff" shall prosecute appeal to effect; City Court having amended its record to accord with fact, plea denied, 119 C 564
plea in abatement proper procedure where appeal lies but claimed defect is failure to take steps provided in statute and rules, 124 C 686
——so where appeal from denial of motion to set aside verdict and from judgment improperly combined in one appeal, defect properly presented by plea in abatement, not motion, 124 C 686
——but court gave appellant election to withdraw either appeal, 124 C 687
motion to erase rather than plea in abatement proper way to raise issue of right of appeal, 125 C 347
fact that appeal is taken too late not ground for erasing appeal but is ground for abating it, 129 C 374

§ 9. Essentials and Form

plea in, to officer's return, must traverse the return, 2 R 172
great strictness and precision are required in, 2 R 202, 2 D 405, 3 C 149, 6 C 359, 9 C 479
——but is entitled to reasonable construction, 13 C 527, 45 C 479
——is aided by provisions of statute, 34 C 180
for nonjoinder of others must show who others are, 1 D 28, 6 C 358
must give plaintiff a better writ, 1 D 29, 6 C 358, 9 C 479, 27 C 44
must contain every essential averment, 2 C 379, 3 C 149, 9 C 479
must show how alleged defective appeal should have been taken, 6 C 358
presumption of "once executor always executor" not available in support of, 9 C 480

need not be signed by party or verified by affidavit, 13 C 526
for defective service on nonresident, it is sufficient to give the name of the State only, of nonresident, 13 C 527
pleas in abatement in lower courts to be filed at an early stage, 21 C 510
for nonjoinder must disclose full name of co-defendant, 27 C 44
an initial vowel or consonant may be presumed to be full christian name, 27 C 44
unnecessary to aver matter of record in the case, 27 C 47
——where same is necessarily implied from plea, 13 C 527, 30 C 90, 31 C 397, 34 C 53
——grounds for, not disclosed by the record, must be averred in the plea, 27 C 7
allegations following Swift's form *held* sufficiently precise, 30 C 90
need not anticipate defenses, 31 C 397
sufficient if signed "defendant" where party's name appears in title, 34 C 180
not defective for praying judgment of writ and declaration, 45 C 478
for nonjoinder must aver that codebtor is living, 48 C 40
must be certain, 64 C 74, 69 C 272, 73 C 538, 563
must state with certainty all essential facts, 68 C 473
amendment of plea where defendant mistakes ground on which demurrer is sustained and pleads over is within discretion of court, 68 C 474
requisites of, attacking premature bringing of action, 70 C 157, 92 C 380
for defect in tax appeal, should point out defect, 72 C 330
plea must demand judgment, 72 C 444, 74 C 127
liberal practice permitting amendments to pleadings not generally applicable to pleas in abatement: amendment allowed only in furtherance of justice, 73 C 428, 74 C 125
defect in jurisdiction of subject matter may be taken advantage of at any time, 74 C 265, 89 C 200
where facts are undisputed, plea should be framed to raise point of law, 75 C 544
office of a plea is to set up facts otherwise not apparent to court, 79 C 58
function of, is to state facts not apparent on record, 82 C 483
not insufficient, though lacking material date, if that appears of record, 83 C 676
need not anticipate and deny every argumentative claim, 85 C 618
plea which contains no prayer for judgment is demurrable, 105 C 671
plea in abatement to appeal from probate which did not set forth that interest of appellant did not appear on probate records, defective, 112 C 457
court in discretion may permit amendment of plea to include prayer for judgment, 113 C 771
allegation must state with certainty all essential facts; will not be aided by intendment or inference, 115 C 299
plea alleging that defendant did not reside within jurisdiction, that plaintiff was not bona fide owner of claim sued on and that sole purpose of assignment of claim to plaintiff was to give court jurisdiction over judgment claim of defendant within jurisdiction, sufficient, 121 C 343
——that plea did not allege in precise words of statute that plaintiff was not "equitable and bona fide owner" of claim, nil sig., where plaintiff filed denial, and contested issue, 121 C 343
——and finding justified conclusion of court sustaining plea, 121 C 343
——evidence tending to show that plaintiff acquired title to claim at some time previous to assignment recited in complaint, properly excluded as not within its proper scope, 121 C 343

§ 10. Time; Waiver

in nature of demurrer to writ of error, may be entered at second term, K 289
not receivable in Supreme Court after the third day of term, 2 D 552, 2 C 67
——changed by General Rules of Practice, 58 C 588
appeal from judgment on other issue is a waiver of, 15 C 345
court has discretion to accept a plea filed late, 15 C 574, 21 C 511
not receivable in appellate court unless pleaded below and appeal taken from the decision thereon, 19 C 487, 498
must be presented early, 21 C 510
not receivable after judgment on nil dicit, 24 C 332
nonjoinder of a defendant in equity waived by proceeding to trial without objection, 26 C 308, 49 C 568
not receivable after plea to the merits, 29 C 520
ignorance of ground for, no excuse for plea in, filed late, 36 C 352
writ signed by a commissioner in his own suit is a ground for, 47 C 320, 576
——failure to urge objection for two years is a waiver of same, 47 C 576
omission to plead in justice trial the pendency of suit in higher court is no waiver of right to plead justice judgment in bar of further continuance of suit in higher court, 47 C 330
ignorance of cause of abatement does not justify filing of plea in abatement, after time limited, 59 C 102
time for filing, 74 C 126

Supreme Court may regard, though filed after time fixed by statute, 77 C 395
in Supreme Court, must be filed within time prescribed by statute, 98 C 504
——if filed later, motion to dismiss is proper, 98 C 505
nonresident defendant whose plea to jurisdiction because of lack of service is overruled does not waive the defect by answering on the merits; but otherwise where he seeks affirmative relief, 104 C 206
question of jurisdiction not waived by answering on merits after demurrer to plea to jurisdiction sustained, 107 C 545
defendant in replevin suit applying for new bond has elected remedy and waived right to plea in abatement, 111 C 112
after demurrer to plea overruled, motion for default judgment and for bond to prosecute, not such requests for affirmative relief as destroys right to claim abatement, 113 C 772
under statutes before 1929 plea in Supreme Court must be filed not later than the Friday preceding the first day of the term to which it is taken, 114 C 416
whether or not to entertain plea in abatement which is filed late rests in discretion of court, 129 C 374
——where appeal was filed year after judgment, Supreme Court overlooked relatively short delay in filing plea, 129 C 377

ABORTION

assault to commit; evidence of conduct and statements of victim after assault; presumption that abortion was not necessary to save life, 69 C 186
as a crime; victim not an accomplice; evidence, 76 C 343
statement of victim to police officer read in accused's presence *held* admissible, though he also reads caption added by him, if it adds nothing, 107 C 148
——dying declaration *held* admissible, 107 C 148
——if death results accused may be prosecuted for manslaughter and declaration admitted, 107 C 148
where it was admitted that victim had visited offices of accused and made arrangements to go to another office, no error to permit mother to testify that daughter had told her of visit and she had asked what "arrangement" was made, 108 C 53
——so belief of daughter that she was pregnant was relevant, 108 C 53
province of jury to resolve conflict in evidence upon charge in information and upon accused's defense of alibi, 111 C 720
evidence in defense held to produce no more than a possible, as distinguished from a reasonable, doubt, 128 C 297

ABUSE OF FEMALE CHILD

See also Rape

conviction may be had on uncorroborated testimony of nine-year-old girl as to principal fact, 29 C 389
criminal abuse of female child; electing between counts; evidence as to later acts of intercourse; charges by child at time of miscarriage; intercourse sufficient abuse, 81 C 1, 98
——declarations of child as to guilt of defendant, 81 C 6
criminal abuse of female child, information against, 82 C 213
abuse of child under sixteen none the less a crime because done in house of ill fame, 82 C 213
——woman who aids is not guilty of less crime because she keeps house, 82 C 213
can be guilty as principal or accessory even if incapable of committing abuse of female child alone; woman can be guilty, 82 C 214
previous chastity or consent of no significance; scope of cross-examination, 82 C 454
defense entitled to show contradictory statements out of court, 82 C 454
broad latitude allowed on cross-examination as to former misconduct, 82 C 454
evidence of unchastity since assault, excluded, 82 C 454
husband living with wife under sixteen not guilty of carnal abuse of female child, 113 C 288
corroboration not necessary to proof of guilt, although in its absence court should adopt cautious approach, particularly if there are improbabilities in complainant's story or controverting evidence, 128 C 124

ABUSE OF PROCESS

See also MALICIOUS PROSECUTION; PROCESS; PUBLIC OFFICERS §§ 9, 12

trespass will not lie for an act done under a process, valid on the face of it, and regularly issued by a court of competent jurisdiction, 2 C 700, 9 C 147, 39 C 505

for an abuse of lawful process, scienter et malitiose, an action on the case is the proper remedy, 2 C 700, 39 C 505

manner of levying execution *held* not an abuse of process, 103 C 744

officer must obey process literally; otherwise guilty of abuse, 105 C 177

officer who uses excessive force or oppression, as in taking person arrested to wrong place, or permits process to be used to extort money, is guilty of abuse of process, 105 C 177

elements of compensatory damages, and of exemplary damages when malice involved, 105 C 177

liability as joint tort-feasors of all participants, 105 C 177

expense of defending against crime charged is not an element of damage, 105 C 181

is the misuse of process regularly issued to accomplish an unlawful ulterior purpose, 110 C 528

allegations that suit was commenced in another State solely to harass defendant while similar suit pending here constitute action for malicious prosecution, not abuse of process, 110 C 528

ABUTTING OWNERS

See ADJOINING LANDOWNERS; DEEDS § 8; HIGHWAYS §§ 8, 16; INJUNCTION; MUNICIPAL CORPORATIONS §§ 5, 10 (2); TELEPHONE AND TELEGRAPH COMPANIES

ACCESSION

title by accession, once acquired, is exclusive of right in common with original owner, 12 C 484

applicable to avails of mortgaged personalty, when, 14 C 265

action by owner of land against trespasser cutting grass and making it into hay; owner can recover value of hay without allowance for time, trouble or expense of cutting, 15 C 347

use of material of old shop in building new, by tenant, 16 C 329

in action of trover, where plaintiffs delivered hat bodies and fur to manufacturer to be made into hats and had never parted with property, damages would not be full value of hats but value of hat bodies and fur, 23 C 523

what is required to gain title by accession, 40 C 397

the doctrine of title by accession does not apply to equipment not intended to be merged in structure of car and as readily detachable as tires and tubes, 115 C 187

doctrine of accession as applied to automobiles and parts discussed and authorities reviewed, 121 C 188

——while the parts used in ordinary repairs become merged in the principal thing, equipment which is distinguishable and detachable does not merge, 121 C 190

——so where defendant purchased stolen car in good faith except engine, which was installed by H and could be removed, *held* real owner of car not entitled to engine on replevin, 121 C 188

one in possession of stolen property may not ordinarily assert any claim to it as against owner, 121 C 188

——but where he has acted in good faith he is not debarred from claiming parts added to it, as would be the thief, 121 C 188

ACCESSORY

See ACCOMPLICE AND ACCESSORY

ACCIDENT AND MISTAKE

See MISTAKE; REFORMATION OF INSTRUMENTS; TAXATION § 29

ACCOMPLICE AND ACCESSORY

§ 1. In General
2. Evidence

See also Charge to Jury § 38; Criminal Law and Procedure

§ 1. In General

subsequent assent merely will not render one an accessory, 6 C 13

distinction between principal and accessory done away with by statute, 34 C 131, 48 C 96

accessory before the fact may be charged as principal in one count, as accessory in another, 47 C 120

a purchaser of intoxicating liquor sold illegally is not an accomplice under statute, 50 C 100

one on whom an abortion is committed is nôt an accomplice, 76 C 342

all participants in crime liable as principals, 80 C 318, 97 C 332

supplying "ticker" to pool room, 80 C 318

one may be accessory of crime he is incapable of committing, 82 C 213

distinction between principal and accessory abolished by statute in cases of felony, 82 C 213

woman bawdyhouse keeper accessory in rape, 82 C 213

one present at a crime, aiding and abetting, is principal at common law, 82 C 217

mere knowledge of and silent acquiescence in plan to commit crime does not make one an abettor, 88 C 164

accomplice may be punished as principal though latter has not been convicted, but commission of crime must be proved, 88 C 164

accessory after the fact not chargeable as principal, 92 C 73

jury should be told specifically what an accessory is, 96 C 420

what constitutes accessory under our statute making him liable as principal; charge de, considered, 96 C 420

proper to join counts charging commission of crime and that one was accessory to it, 98 C 455

proof of being accessory before the fact supports charge of being principal, 98 C 460

criminal responsibility for another's acts largely governed by statute, 102 C 634

——responsibility for act of business partner covered by charge de effect of statute, 102 C 634

provision that one accompanying vehicle engaged in transporting liquor "may" be prosecuted as accessory is permissive not mandatory, 103 C 138

statute de accomplices, etc., applicable to statutory as well as common-law crimes, even where statute creating the crime makes special provision for certain types of accessory, 103 C 138

to be an accessory one must have positively aided or instigated the crime, 103 C 142

one who buys liquor not accessory at common law, 103 C 143

accessory defined; instruction to jury *held* too favorable to accused; "active" participation or "positive" act unnecessary, 105 C 757

under statute de accessories, person accused of arson could be convicted as principal, though not owner or tenant of building burned, 109 C 394

State not bound to prove that one setting fire was agent of the accused, but only that accused was within the statute as to accessory, 110 C 55

where accused is charged as accessory, something more than mere reading of statute to jury is necessary, 110 C 410

accessory may be prosecuted and punished as principal, 113 C 767

——information may charge accused as accessory or as principal offender, 113 C 767

——where charge was that accused did unlawfully manufacture, aid and abet in the manufacture of liquors, effect was to particularize the charge as regards the accessory, 113 C 767

one not present at assault may be charged jointly with accused as accessory under statute, 114 C 573

those who watched and aided in purchase and transportation of stolen liquor were accessories, 119 C 29

——though property was purchased in another State but was transported into and concealed in this State with their connivance, 119 C 29

receiver of stolen goods may be prosecuted though person who committed theft has not been convicted, 119 C 31

in unauthorized transfer of all assets of corporation, wrong being in nature of tort, all who actively and knowingly participated in bringing it about are equally liable with guilty directors or stockholders, 123 C 631

all who join in common design to commit unlawful act, natural and probable consequence of which is to take human life, are

responsible for homicide committed by one of them while so acting, 126 C 49
——so where there was conspiracy between defendant and W to use gun to commit robbery, defendant properly convicted of homicide when W killed a man, 126 C 49
defendant's claim that conviction should have been confined to accessory to crime of robbery and not extended to murder, rejected, 126 C 51

§ 2. Evidence
an accomplice is a competent witness, 21 C 280
——so also is wife of accomplice, 21 C 281
courts do and should advise jury de the credit due the evidence of accomplice, 21 C 282
what is a corroboration of the evidence of an accomplice, 21 C 282
jury have legal right to convict on uncorroborated testimony of accomplice, 29 C 473, 42 C 263
——court should caution jury de such evidence, 29 C 473, 42 C 263
——failure to do so, ground for new trial, 29 C 473
ordinarily one accomplice cannot corroborate another, 42 C 265
——may, where there has been no opportunity to agree on a story, 42 C 265
accomplice ought to be corroborated as to some fact tending to connect prisoner with the offense, 54 C 190
——any fact tending in slight degree to corroborate any part of his testimony admissible, 54 C 191
——though such fact does not connect prisoner with the offense, 54 C 191
evidence *held* to tend to connect prisoner with offense, 54 C 191
——charge de testimony of accomplice *held* correct, 54 C 192
testimony of accomplice may be sufficient to convict without corroboration, 54 C 194
corroboration of testimony of accomplice, 75 C 436
caution to jury as to weight of testimony of accomplice, 76 C 342
testimony of an accomplice needs corroboration if moral turpitude attaches to the crime; corroboration not always necessary, 84 C 411
how far statement of one charged with a crime can be used against another likewise incriminated, 88 C 164, 92 C 58
necessity of corroborating accomplice who testifies for the prosecution in homicide case, 97 C 463
when necessary for court to charge as to testimony of accomplice, 98 C 455
at common law conviction of principal gave rise to presumption against accessory; effect, 99 C 103
——not so under our statutes, 99 C 103
that testimony of accomplice not corroborated does not compel acquittal, 103 C 138
that accomplice had been already tried and punished, proper for jury's consideration, 103 C 138
accomplice's testimony may support conviction, though uncorroborated, if it establishes guilt beyond reasonable doubt, 105 C 326
instructions to jury de accomplice's testimony within reasonable discretion of trial court, 105 C 326
evidence *held* to support conviction of accomplice of first degree murder, 106 C 701
jury may accept testimony of one who was accomplice and had perjured himself on his own trial as principal, 108 C 53
charge that whether and to what extent corroboration of testimony of accomplice necessary is for jury, correct, 110 C 55
testimony of accomplice need not necessarily be corroborated in order that it may be accepted by jury, 119 C 29
existence of agreement to commit crime, essential to conclusion that accused was accessory, properly provable by circumstantial evidence, 126 C 48
——court warranted in concluding that guilty knowledge essential to render defendant guilty as accessory was established, 126 C 48
trier may convict accused upon uncorroborated testimony of accomplice, provided it believes crime proved beyond reasonable doubt, 126 C 48
——and where that evidence was corroborated by other evidence, a fortiori the court could convict, 126 C 49
——court could also accept part and reject part of testimony of accomplice, 126 C 49

ACCORD AND SATISFACTION

§ 1. In General
2. Consideration; Part Payment
3. Execution
4. Pleading and Evidence

See also Contracts § 26; Payment; Release and Discharge

§ 1. In General

acceptance of new contract in satisfaction of old, a bar to suit on the old, 2 R 169

satisfaction of one or more of several joint trespassers is discharge of them all, 31 C 452

definition of accord and satisfaction, 43 C 462

accord in full of all demands not defeated by secret belief of party offering same, 43 C 464

agreement to accept certain sum at certain time in satisfaction of a judgment *held* not a case of accord but a condition precedent to right of defendants to discharge of judgment, 59 C 110

after payment accepted for services de real estate, cannot sue for full commission upon subsequent purchase of property, 64 C 130

satisfaction of judgment by one joint tortfeasor discharges all, 67 C 256

if right of action is once satisfied, it ceases to exist; part satisfaction permits recovery only of the balance, 89 C 95

statement on check construed to indicate only intent to pay certain items, 94 C 652

when induced by fraud and concealment, it is thereby vitiated, 98 C 185

representation by owner to architect that plans have been abandoned vitiates latter's agreement to accept sum for work done, 98 C 185

answer alleging that, after disputes had arisen as to delays in shipping coke contracted to be sold, new contract was made *held* not to allege executory accord but substitute agreement, 107 C 40

——particularly in view of unforeseen circumstances that had arisen, which made first contract of little value, and buyer's claim that it was in Statute of Frauds, 107 C 40

——it would seem that, if second agreement had been accord and satisfaction, delayed payment was justified by failure to present correct invoice, 107 C 40

that principal officers of corporation absent when check received and general manager on his return wrote that it would not have been accepted had he known situation, no ground for relief, 108 C 469

must appear that writing was given with intention eventually to extinguish claims and particularly claim in suit, 109 C 244

——there must be new consideration and offer to extinguish whole claim, and this must be accepted with knowledge that it was intended to have this effect, 109 C 244

——hence where suit brought for services as housekeeper and defense claimed was receipt for certain expenditures made, with statement that nothing else claimed, no accord and satisfaction, 109 C 244

——no reference had been made to unliquidated claim in suit nor was it made known to plaintiff that its extinguishment was intended to be included, 109 C 244

——nor had claim in suit then matured, 109 C 244

plaintiff sold defendant soda fountain on conditional sale and after latter defaulted in payments, negotiated with him for payment; *held* on record there was no agreement for accord and satisfaction or substitute contract, 117 C 1

acceptance of rent under oral agreement reducing it from written lease constitutes accord and satisfaction, 120 C 572

agreement obtained by misrepresentation of material facts whereby an unfair settlement to prejudice of other party is procured cannot be enforced, 126 C 692

agreement of bank to release mortgage on payment of less than sum due, procured through untrue statements of mortgagor as to amounts he could raise, constituted accord obtained by misrepresentation of material facts and could not be enforced, 126 C 692

——mortgagee entitled to rely on representations and was under no duty to inquire into source from which mortgagor proposed to secure money, 126 C 699

§ 2. Consideration; Part Payment

agreement to take part of a debt for the whole without consideration is a nudum pactum, 20 C 561

a receipt in full is a good defense in bar, even though less sum paid than judgment due, 21 C 200

agreement to accept part and payment thereof, in satisfaction of whole, is not accord and satisfaction, 26 C 395

——aliter, if a new duty varying the contract be assumed by debtor, 26 C 395
acceptance of small amount cancels claim of plaintiff where he knew it had been intended as full payment for services, 37 C 96
where notes sold for smaller sum than was due on them, no inference that larger sum was satisfied by payment of smaller; notes subject to sale like any other personal property, 41 C 56
new note indorsed by third person sufficient consideration for agreement to discharge whole debt on payment of part, 43 C 166
in what cases any sum, if taken in satisfaction, will be treated as accord and satisfaction, 43 C 469
liquidated money demand cannot be satisfied by payment of part only, but any additional personal property, however slight, may satisfy, 43 C 470
any agreed sum may satisfy unliquidated claim for personalty, 43 C 470
acceptance of less than is due on unliquidated claim, tendered as payment in full, is accord and satisfaction, 44 C 544, 54 C 8, 76 C 194
——though creditor received it on account merely, 44 C 544
payment of less sum than is due is not accord and satisfaction, 46 C 316
——aliter, where new consideration, though of slight value, appears, 46 C 317
receipt in full given upon part payment extinguishes any further claim, 54 C 446, 85 C 679
acceptance of less amount in full payment of claim sued upon is complete defense to the action, 58 C 316
accord and satisfaction requires consideration and meeting of the minds, 94 C 652
consideration is from debtor and accepted by creditor to satisfy whole claim, 94 C 652
——must clearly appear that less sum was offered in payment of whole claim, 94 C 652
where amount due is disputed, and lesser sum is tendered with intent expressed or implied by conduct that it was to be in full settlement, creditor must refuse it or accept it on that condition, 108 C 469, 118 C 68, 128 C 70
——if he accepts, debt is cancelled despite any protest to the contrary, 108 C 469
——any sum given and received in satisfaction of unliquidated debt is sufficient consideration, and debt is unliquidated though only dispute is as to which of two sums is due, 108 C 469
acceptance of check sent with deduction for goods buyer refused to pay for *held* accord and satisfaction, 108 C 469
there must be new consideration and offer to extinguish whole claim, and this must be accepted with knowledge that it was intended to have this effect, 109 C 244
where no dispute and one party makes statement of account which contains item to which he is not entitled accompanied by payment, person accepting must have assented to payment as in full to be concluded, 118 C 68
——and mere fact that debtor states on accompanying check that payment made is in full satisfaction, while evidence of assent, is not conclusive, 118 C 68
——as where defendant in account charged interest on open account against plaintiff who could not read well and latter indorsed check in full payment not knowing interest was deducted, 118 C 68
agreement to accept lesser sum than amount due in full payment must be founded on a consideration, 126 C 698
when offer of sum less than amount claimed due is accompanied by acts or declarations which make acceptance conditional upon acceptance in full satisfaction, and offer clearly brings this home to creditor, latter must refuse offer or accept on that condition, 128 C 70
——so acceptance of check marked "by endorsement this check is accepted in full payment" amounts to accord and satisfaction, 128 C 70
when a demand is regarded as unliquidated as applied to subject of accord and satisfaction, 128 C 73

§ 3. Execution

an accord or executory agreement not executed can be no bar to an action, 1 R 426
agreement to forbear to sue no bar to action of book debt, 2 R 139
acceptance of agreement with mutual promises on which party has a legal remedy is accord and satisfaction though promises are not performed, 24 C 621
agreement to accept labor unperformed is not accord and satisfaction, 24 C 622
no defense unless performed, 66 C 510
sufficiency of performance of executory accord, 107 C 40
where agreement is made for satisfaction of pre-existing contractual duty, if duty is to pay liquidated sum, agreement is interpreted in case of doubt as meaning that only performance of subsequent contract shall discharge such duty, 122 C 267
where mortgagee agreed to accept certain sum in settlement of debt, payable in monthly instalments with balance due on certain day, agreement was not in substitution and extinguishment of former but was an accord, 122 C 268
——so that, where instalments were paid but balance was not, court correctly rendered

judgment predicated on original indebtedness, 122 C 268
whether agreement is accord and satisfaction depends on intention of parties, 126 C 46
——strong presumption that person would not, claiming undisputed amount, accept mere promise to pay smaller sum in discharge, 126 C 46
——and fact that release given in escrow with instructions that it be given debtor when sum agreed on in settlement was paid is strongest evidence that agreement was executory accord, 126 C 46
——where such sum never paid, accord did not ripen into satisfaction, 126 C 46
question whether agreement between attorney and client was accord and satisfaction of former's claim for legal fees, or an executory accord, one of intention, 126 C 154
——if the former, the new contract became substituted for contingent fee contract, extinguished it and damages could be based on former, 126 C 154
——if latter, damages might be based on old contingency fee contract, 126 C 155
——as no finding on this vital point, case was remanded, 126 C 155

§ 4. Pleading and Evidence

evidence of accord and satisfaction inadmissible under plea of payment, 1 R 75, 141
accord and satisfaction may be pleaded in bar to writ of error, 2 D 242
that work was accepted in payment of note in suit, admissible as accord and satisfaction, 5 D 360
accord and satisfaction must be specially pleaded, 67 C 35, 76 C 194, 83 C 252
evidence tended to show acceptance of execution of accord in satisfaction of previous claim to strip of land, 73 C 535
letters admissible to show false representations induced creditor's acceptance of offer of compromise, 77 C 337
accord and satisfaction should be specially pleaded but failure to object *held* to waive defect, 108 C 469
evidence admissible on whether parties entered into agreement alleged, 109 C 248

ACCOUNTS AND ACCOUNTING

§ 1. In General
2. When Action Lies
3. Pleading and Practice

Note: Cases dealing with accounting in partnership are listed under Partnership § 6.

See also Assumpsit and Book Debt in Andrews and Fowler and Maltbie and Townshend Digests; Contracts § 39; Executors and Administrators § 4; Limitation of Actions; Pleading § 10 (6)

§ 1. In General

action of account lies before a justice of the peace, 1 R 217
auditors may report balance due defendant, 2 R 122
report of auditors that defendant has fully accounted is bad, 2 D 120
proof that defendant was bailiff any part of the time over any part of property supports a general verdict, 5 D 457, 16 C 343
general verdict sufficient though some charges were not to be accounted for, 5 D 457
account may lie in equity where settlement is very difficult at law, 10 C 276
accounts should be settled down to date of auditor's report, 11 C 366
equitable relief not granted merely because accounts are complicated, 17 C 370
defendant cannot go into distinct accounts by way of set-off, 18 C 186
no objection to account, that accounts of third person are interwoven, 22 C 359
whether bailiff or not is to be tried by court before sending case to auditors, 24 C 193
account may be taken up to time of making award, 24 C 195
defendant to be credited with avails of execution sale received by plaintiff, 24 C 195
payment by lessee of cotenant for more ore than tenant could grant, no defense to action of account, 25 C 152
a defendant in possession of the subject matter of the litigation at time suit is brought cannot exonerate himself from liability by transferring that possession to a codefendant afterwards, 28 C 466
general statement of account does not necessarily preclude a recovery, 34 C 361
judgment that defendant account is not essential when, 37 C 428
report of committee in suit for accounting not to be rejected if it presents all the facts required to enable court to settle accounts equitably, 53 C 40

action by one of the parties to a lease of a farm on shares for portion of crops sold is not necessarily one of account, 55 C 405
power of court to correct account where committee finds all items, 86 C 199, 87 C 241
accounting imports consent by plaintiff to judgment for the defendant if balance is in his favor, 93 C 146
——no cross-complaint or counterclaim necessary, 93 C 146
——costs go to party in whose favor balance is found, 93 C 146
where defendant claimed debt sued on had been paid by conveyance of land and counterclaimed for breach of warranty but court found conveyance was as security, defendant could not obtain judgment for balance of loan, 96 C 212
on appeal, Supreme Court may order necessary party to be entered in suit, 100 C 689
jurisdiction of Probate and Superior Courts de accounts in testamentary and inter vivos trusts, 102 C 96
laches and Statute of Limitations as applied to actions for account, 102 C 258
"account" has no definite legal meaning; may include items omitted by oversight of parties, 102 C 258
items improperly omitted by oversight of parties will be treated by equity as though they appeared and rights will be determined accordingly, 102 C 258
concurrent jurisdiction of Superior and Probate Courts over claim of cestui que trust for accounting, 104 C 169
Statute of Limitations does not run against accounting by trustee who has mingled trust funds with his own, 104 C 171
accounting as equitable remedy, 104 C 187
book account between plaintiff's intestate and defendant; certain credits allowed defendant by court sustained and one disallowed, 113 C 610
retention by bank depositor of statement of account for unreasonable time constitutes account stated, which is prima facie evidence of correctness of the account, 115 C 50
action of account as recognized by our statutes is common-law action of account somewhat amplified, 120 C 184
——court does not go into items but only pleas attacking right of plaintiff to accounting are permitted, 120 C 184
——defense "fully accounted" means a full account has been rendered, not that all money received has been properly expended, 120 C 184
——judgment in action for accounting is, if issue is pending raising right of plaintiff to have it, that there be an accounting, 120 C 184
——where case was tried as one of assumpsit on open account, and it appeared that all money received was properly expended, claim of plaintiff, made for first time on appeal, that judgment of accounting should have been rendered, was without merit, 120 C 184
under judgment for accounting defendants entitled before committee to prove and receive benefits of any proper credits, 128 C 442
——therefore denial of motion to amend judgment by inserting provisions for deduction of certain costs and expenses not prejudicial, 128 C 442
expenditures by defendants for care, maintenance and operation of real estate restored to plaintiff considered, 128 C 442

§ 2. When Action Lies

action of account lies where one has received money to another's use, K 164
——where received from third person to be delivered over, K 164
——assumpsit a concurrent remedy in the same instances, K 165
a different form of action prejudicial to defendant is not allowed in place of action of account, 1 C 179
account does not lie by one executor against coexecutor, but lies by executor against executor of coexecutor, 5 C 26
vendee of interest of one cotenant liable in account if other cotenants have assented to sale, 7 C 99
action of account lies to compel guardian to disclose and account, 9 C 559
equity cannot inquire into accounts cognizable only in Probate Court, 10 C 125
owner of policy and bill of lading who parts with all interest cannot maintain an action of account for avails, 10 C 211
one suing as cotenant only cannot recover for period when there were more than two cotenants, 16 C 341
——nor for rents while he had equitable title only, 16 C 341
——aliter, if defendant was bailiff by plaintiff's appointment, 16 C 341
properly lies in equity as to amount of share of proceeds belonging to each mortgagee from sale of property conveyed by the mortgage, 22 C 203
tenant making necessary repairs may recover of his cotenants their share of the expense, 50 C 256
railroad company leasing another railroad and then becoming sole owner of latter's mortgage bonds is liable to account for net receipts, 54 C 486
nature of an account demanded of railroad company by mortgagor and lessor *held* not unreasonable, 54 C 487
——railroad company in accounting *held* liable for net receipts of leased road rather

than for a pro rata share of receipts of whole line, 54 C 487
action on agreement for repayment of advances from collections on accounts due, as far as they will go, 68 C 458
action for money due on note gives no right to accounting, nor to any equitable relief, 71 C 245
acknowledgment of sum due will support action of account stated, 77 C 592
existence of relations and series of facts and events *held* to justify claim of plaintiff, a lodge of a fraternal insurance order, to an equitable proportion of certain funds in hands of defendant, also a lodge, irrespective of any contractual undertaking, 81 C 189
adjusting accounts between husband and wife, 82 C 424
a lodge of a beneficiary association that is set off from a parent lodge is entitled to an accounting, 83 C 241
accounting by mortgagee in possession under agreement to mortgagor, 100 C 687
in suit to set aside trust, Superior Court, after rendering judgment for plaintiff, should proceed to order accounting, 102 C 96
president's duty to account for profits from secret competition with his corporation, 102 C 170
suit for accounting of royalties accruing under continuing contract between corporation and its president, 102 C 255
husband given wife's funds for investment; trust relation; duty to account, 104 C 169
joint fund accumulated by husband and wife in latter's name; latter *held* entitled to one-half on principle of joint adventure, 107 C 342
between tenants in common, accounting always lies though they are husband and wife, 110 C 651
——all equities to be regarded, 110 C 651
——if improvements made without intent to claim credit, presumption is that other tenant was to have title without contribution, 110 C 651
——rule applied where husband had sole use for eight years and gave no support to wife who had left him, 110 C 651
pool to trade in securities *held* joint enterprise; it is for member to establish if profits are due him, 115 C 86
wife turned over earnings to husband under agreement that she should have half interest; husband engaged in lawful liquor business and afterward in unlawful business; rights of wife to accounting, 115 C 418
action for accounting of trust funds in Superior Court when proceedings on final account of trustee are pending in Probate Court, 121 C 388

§ 3. Pleading and Practice

under plea of "never bailiff," defendant cannot show that he is not in arrears, 1 R 425
declaration stating agreement de application of the money and a promise to account is not double, 2 R 42
demand previous to action of account is unnecessary, 5 D 457
appeal does not lie from County Court to Superior Court on report of auditors in book debt, 13 C 528
rule as to joinder of counts the same as in other actions, 16 C 345
declaration charging one as bailiff or receiver must state of what, 18 C 186
matter pleadable in bar is not afterwards pleadable before auditors, 24 C 194
where defendants are sued as common-law bailiffs, an averment that they have taken more than their share unnecessary, 25 C 148
——though holding with plaintiff as tenants in common, 25 C 148
bill in equity *held* on demurrer insufficient for want of allegation of demand by plaintiffs and refusal by defendants, 27 C 355
allegations introduced by amendment become part of orginal bill, 28 C 470
auditors may require each party to file bill of particulars, 37 C 429
A had claim against B for accounting to certain date, then against C, grantee of B; *held* that A could not join B and C as co-defendants, 53 C 41
——there being no joint liability, 53 C 42
unnecessary to allege in complaint facts out of which account stated arose, 66 C 156
judgment for accounting, within the issues, is final, 74 C 11
in accounting, terms of the contract must be alleged, 82 C 91
plaintiff must allege and prove demand and refusal prior to suit, 100 C 690
refusal to order accounting is an interlocutory judgment reviewable on appeal, 102 C 97
judgment for accounting is final as regards appeal, 102 C 122
no demand and refusal need be pleaded or proved where suit is of equitable nature, 102 C 171
involved action for accounting should not be tried to jury, 110 C 536
only pleas attacking right of plaintiff to accounting are permitted, 120 C 184
in action of account, as in any other, judgment cannot ordinarily rest upon determination of issues not fairly within pleadings, 128 C 121
——but matter alleged as basis for accounting may be so interwoven with matters not alleged that latter must be taken into consideration for a full accounting, 128 C 121
ultimate basis for rule is that as to issues not alleged, adversary has never been properly

brought before court and hence court lacks jurisdiction, 128 C 121

——but this lack of jurisdiction may be waived and parties, by consent, may enlarge scope of litigation to include issues not raised by pleadings, 128 C 121

——so where defendant consented to and actively participated in inclusion in accounting of all transactions, he had no right, when acceptance of auditor's report came before court, to claim that report went beyond issues made by pleadings, 128 C 121

ACCRETION

See Waters

ACCUMULATIONS

See Perpetuities § 4; Trusts § 13

ACKNOWLEDGMENT

See Corporations § 15; Deeds § 2; Sales § 23

ACQUIESCENCE

See Accomplice and Accessory; Agency §§ 4, 7; Boundaries; Estoppel § 8; Evidence §§ 15, 84; Waiver

ACTIONS

§ 1. In General; Nature of
2. When Right or Cause of Action Exists
3. Joinder; Consolidation; Pendency of Another Action
4. Commencement; Suspension; Revival
5. Survival
6. Withdrawal

See also Criminal Law and Procedure § 2; Death by Wrongful Act; Limitation of Actions; Parties; Removal of Causes; Venue

§ 1. In General; Nature of

where a statute creates a duty and fails to provide a remedy, common law supplies the remedy, 2 R 168

unless defendant must clearly recover back the same damages, plaintiff's suit is not barred by principle of circuity of action, 10 C 435

actions may be brought to adjourned term, when, 10 C 488

a right without a remedy is not an admitted principle, 16 C 382, 17 C 303

one cannot sue for money which he must immediately refund to defendant, 49 C 408

plaintiff not bound to sue upon request of defendant who disputes his right, 51 C 310

a man with a good cause of action may sue or not as he pleases, 55 C 355

a suit brought on original claim, after a suit on note given for the damage has been defeated, is "for the same cause of action"; authorities reviewed, 56 C 594, 596

"a cause of action arising from the same transaction" is identical in substance with term "ground of action," 56 C 594

appeal from probate of will is not an "action" within statute de receiving memoranda of deceased in actions by or against representatives of deceased persons, 63 C 393

where there is a choice of remedies, plaintiff can choose, 66 C 512

motive in bringing action is of no consequence, 67 C 91, 68 C 588

amicable suit is creature of statute and must follow it, 68 C 214

plaintiff may still treat action as ex contractu, though he caused attachment of defendant's body and treated it as in tort on demurrer, 68 C 459

effect of old division of actions, under Practice Act, 68 C 469

at law only facts existing at time of bringing action can support; amendment cannot bring in later ones, 69 C 304, 71 C 418, 72 C 276, 73 C 385, 74 C 459, 82 C 563
——thus neglect, in statutory action for, 78 C 652
——not so in equity, 78 C 343
——thus judgment for account where cause of action only matured after action brought, and new facts were alleged by amendment *held* only technically erroneous, 69 C 304
——where continuing cause of action was alleged in counterclaim damages were given to time of trial, 64 C 556
amicable suit maintainable only where court's judgment could have been invoked as to same matter in an ordinary suit, 68 C 332
definition, 70 C 700, 72 C 260, 73 C 717, 77 C 285
deceit practised in another action not regarded, 72 C 362
persistent litigation over small matter discountenanced, 73 C 559
arbitration under rule of court resulting in judgment is an "action," 73 C 715
where statute gives right without a remedy the common law supplies the latter, 75 C 150, 79 C 25
action to adjust equitable rights in stocks and compel registry is in rem, 76 C 628
"civil action," as used in Practice Act, includes equitable action, 81 C 402
action for breach of oral promise of grantee to hold land in trust is transitory, 81 C 433
where only one penalty is recoverable, first to sue receives it, 82 C 1
cause of action and right of action distinguished, 82 C 146
rights involved governed by law where action originated, 82 C 352
rules of equity govern in all actions, 82 C 559
plaintiff at law must have cause of action before he comes into court, 83 C 33
useless to bring action that cannot be maintained, 83 C 35
action for cutting trees after a certain date, no bar to pending action for cutting before that date, 83 C 311
"actions" within § 705, Rev. 1902, include probate appeals, 84 C 663
writ of error is an independent action, 85 C 374
recovery had on cause of action chosen, not another, 85 C 448
where one has right to sue two, bound by his election in first action, 87 C 528
defective cause of action not aided by amendment, 87 C 634
disbarment proceedings not a civil or criminal action, 88 C 447
hearing before public utilities commission not a civil action, 88 C 472
civil action does not include probate appeal, 90 C 50
no remedy if there is no liability, 90 C 226
statutory limitation to enforce an action is part of the right of action; must be strictly complied with, 90 C 527
cause of action includes right to commence and maintain action, 91 C 682
no interest allowed if action brought prematurely, 92 C 135
motion to dissolve attachment is independent action, 92 C 682
act creating new liability may affix limitations upon it, 93 C 176
mere voluntary forbearance to sue not an extension of credit unless pursuant to agreement for some definite time, 93 C 260
limitation as to time in statute creating a right becomes essential element, not subject to waiver, estoppel, etc., 98 C 770
after nonsuit in action for wrongful death, new action may be brought, under statute de accidental failure of suits, within one year, 102 C 66
action upon claim against distributed estate, though single in form, involves two distinct steps, 102 C 644
causes of action against husband for wife's necessaries explained and defined, 102 C 703
injunction under Federal Prohibition Act is civil, not criminal, relief, 103 C 7
Practice Act has not changed relief to which one is entitled on given state of facts, 103 C 285
action against town for defective highway is not one for negligence but to enforce statutory penalty, 103 C 598
ordinarily an action stands or falls by law and facts existing when it is brought, 103 C 609
liability of town for defective highway is penal, not based on negligence, 104 C 83
where complaint based on negligence, recovery can be had on no other ground, 104 C 283
action against street railway under Chapter 314, Public Acts of 1921, rests on negligence and is not penal in nature; therefore written notice of injury necessary, 105 C 94
——where action terminated because against wrong defendant, new action may be brought within one year, 105 C 94
nature of statutory action against debtor who has concealed his property, 105 C 679
action for legal relief governed by facts and law at time when suit brought, 106 C 698
Practice Act has changed forms and nomenclature, but not redress to which one is entitled, 107 C 117
ejectment is a local action; maintainable as proceeding in rem against a nonresident, 108 C 173

under New York statute, action is not "property" of decedent within meaning of § 4972, Rev 1918, 108 C 436
statute authorizing new action within one year after nonsuit to be liberally construed; new action may be based on same or different allegations, 108 C 484
actions at law determined on facts when brought, 109 C 254
——but mandamus, which is decided on equitable considerations, may be refused for facts subsequently occurring, 109 C 254
remedy under New Jersey law is part of cause of action in this State arising under New Jersey statute, 112 C 58
right of action for personal injuries or injuries to property is vested right, 112 C 145
——cannot be invaded by retrospective legislation, 112 C 145
cause of action based on personal liability of trustee is not action to enforce trust, but is action at law, 113 C 429
right to obtain and liability to pay compensation substituted for common-law rights and liabilities, 114 C 126
plaintiff may state facts in complaint and demand redress for wrongs inferable whether they arise in contract or tort, 114 C 250
act providing for bond for payment of tax *held* not intended to make suit on bond exclusive remedy, 115 C 554
proceedings for admission to bar are not actions at law; they are administrative in nature, 116 C 409
remedy will not be enforced where it would be unjust because party has by conduct waived it, or has put other party in situation which would not be reasonable if remedy were asserted, 116 C 617
judgment in action begun and prosecuted against defendant who is dead when it was begun is null and void and may be attacked collaterally, 117 C 39
policy of State that all courts shall administer legal and equitable rights and apply legal and equitable remedies in favor of every party in one and the same suit, 117 C 240
hearing before tax commissioner de listing and assessing property not an adversary proceeding like a suit between parties, 117 C 305
whether one owes duty to another and if so nature of that duty depends upon relationship they stand to each other, 117 C 367
action treated as one for declaratory judgment rather than interpleader and counsel fees not allowed, 117 C 496
where tenant in common sued for accounting of "moneys collected as rents" by cotenant who "acted as manager" of property, action was for rents actually received not for sum representing fair rental value, 118 C 12
actions for contribution are equitable in origin but now recognized in courts of law, 119 C 681
granting of motion to restore case to docket not final judgment from which appeal lies, 123 C 166
causa causans distinguished from causa sina qua non; causation, 123 C 650
is vested property interest, before as well as after judgment, 125 C 147
by assuming defense, instead of tendering it to the other side, one defendant did not become solely liable, 126 C 357
word "action" has no precise meaning and scope of proceedings included in term as used in statute depends on nature and purpose of particular statute, 126 C 602
——cases interpreting word "action" in various statutes and situations, 126 C 604–606
——action does not include appeal from administrative board in statute granting right to new action within one year where original action failed because writ was abated, 126 C 603
disbarment proceedings not criminal or civil action, 128 C 420

§ 2. When Right or Cause of Action Exists

action on promise of indemnity accrues only when actual loss is suffered, 1 R 52, 21 C 123
——aliter, if promise be also to do an act for plaintiff's benefit, 21 C 124
no action lies on contract for smuggling, 1 R 153
no action lies against a county, 1 R 158, 12 C 406
no action lies to recover money paid knowing all the facts, 2 C 671
lies on original cause if new promise is not a security of higher nature, 8 C 417
lies for merely putting in hazard a prescriptive right, 13 C 274
promise to give a note payable in sixty days accrues when promise is broken, 14 C 24
when mutual acts are to be done, party able and ready may sue, 14 C 485
action implies existence of person capable of bringing suit, 15 C 148
none sustainable if plaintiff be compelled to rely on unlawful agreement, 19 C 421, 35 C 217
——aliter, if cause be unconnected with illegal act, 19 C 421
individual can sue public officer only when specially injured, 26 C 336
malicious motives in doing lawful act of no consequence, 30 C 524
act done with intent to injure plaintiff through his contract relations is good cause of, 34 C 388, 35 C 447
money lent on Sunday is not recoverable, 35 C 217
indirect consequential injury too remote to constitute, 35 C 446

——aliter, if maliciously done to injure one through contract relation, 34 C 388; 35 C 447
——if fraudulently done, malicious design must be proved, 35 C 448, 449; 37 C 372
fraudulent acts inducing creditor not to secure debt by legal process, not a cause of, at common law, 41 C 296
——charging conspiracy makes no difference, 41 C 300
mere liability to loss insufficient as cause of, 46 C 128
——aliter, where loss must be inevitable, 46 C 128
none arises on mortgage given to prevent criminal prosecution, 47 C 221
plaintiff cannot sue for money which he must immediately refund to defendant, 49 C 408
——law neither requires nor tolerates such a transaction, 49 C 408
lies against officer for default of service on execution of foreign attachment at expiration of sixty days, 50 C 527
——and not upon judgment against plaintiff on scire facias, 50 C 527
demurrer lies from premature bringing of, 72 C 271
threats do not constitute, 73 C 179, 76 C 79
invasion of right constitutes, though damages are nominal, 80 C 124, 82 C 146
no action lies for act consented to, 80 C 127
——nor mere claims as to construction of contract, 80 C 706
continuance of nuisance or trespass justifies successive suits, 80 C 179, 84 C 117
action lies for breach of promise to continue bakery on leased land, 80 C 192
no right of action if plaintiff acquiesced in failure to make weekly payments, 82 C 383
action lies on breach of agreement with maker of notes to keep them safe and pay them on maker's death, 82 C 600, 609
on agreement to pay by leaving property in will, no action until death, 83 C 35
cause of action must exist before suit can be brought, 83 C 156, 92 C 262
no judicial action on subjects not within judicial function, 85 C 663
allowance of claim in bankruptcy does not extinguish action, 86 C 234
action accrues at date of breach of contract, 86 C 495
right of action created by Federal Employers' Liability Act where none existed at common law, 87 C 328
all rights of action enforcible except those created by penal law of another State or against public policy, 87 C 461
cause of action for breach of contract does not bar one from recovering money paid, due to such breach, 88 C 415
cannot recover back illegal bail voluntarily paid, 89 C 299, 302
against surety accrues when principal breaks his contract, 91 C 197
in breach of continuing contract, action lies at once and all damages past and future are recoverable, 91 C 197
creditor accepting time note for merchandising account agrees to extension, 92 C 262
to recover for expenditures to prevent injury by strikers; limited to such as are incurred prior to the action, 92 C 297
not defeated by assignment before trial, 92 C 427
for indemnity, accrues when liability is fixed, 92 C 664
where lease contains privilege of renewal, a demand and refusal before its expiration gives right of action, 95 C 267
in action for price of goods defendant may deny allegation as to price and counterclaim for damages for fraud in sale, 100 C 393
——or he may bring an independent action for the fraud, 100 C 393
right of mortgagee to sue on foreclosure and on note contemporaneously or successively till debt is satisfied, 102 C 644
divorce decree that alimony include certain bills already contracted by wife, does not give creditors right of action against husband, 102 C 703
when penal statute prevents recovery in civil action, 103 C 21
action cannot be brought against United States, unless it waives prerogative of sovereignty; and then it must be brought in strict accordance with the waiver, 103 C 36
action to recover money loaned not affected by existence of collateral security whether such security be legal or illegal; nor by allegations in complaint concerning it, 103 C 380
tort committed in another State gives action here unless our public policy forbids, 103 C 390
action for fraud not inconsistent with action for damages; each affirms the contract, 103 C 390
liability of one who induces another to break contract or prevents another from carrying out lawful business transaction, 103 C 708
if determination of scope of judgment does not involve facts outside the record and independent relief based thereon, a motion is proper procedure; otherwise independent action should be brought, 104 C 322
agreement that conveyance of real estate shall be rescinded unless grantee can secure judgment releasing restrictions is not opposed to public policy, and grantee may maintain action, 106 C 66
civil action does not lie against one who gives false testimony by party against whom judgment is rendered, 108 C 40

remote obstruction in highway, if it does not affect easement of access, is not legal injury, 109 C 151

mortgagee may bring separate action for deficiency where parties liable were defendants in foreclosure, 109 C 329

where title searcher fails to use proper care, action lies in contract, 111 C 537

cause of action based on failure to obey statute to damage of another, 112 C 586

——as failure of employer in workmen's compensation case, to give notice to commissioner of claim for compensation, 112 C 586

when statute gives right of action and fixes time within which it must be enforced, time fixed is a limitation on the liability, 113 C 1

against charitable corporation for tortious acts of its servants, 113 C 188

destruction of plaintiff's right to harvest ice pond becomes complete when commissioner of health forbade it and right of action then accrued, 114 C 496

——abandonment after commissioner of health forbade its use did not impair plaintiff's right of action for pollution of pond, 114 C 496

invalidity of act of 1929 authorizing state treasurer to sue for tax was cured when suit was brought; *held* treasurer had power to bring it though tax accrued before validating act, 115 C 554

where previous action failed through failure of officer to make return to court before return day new action may be brought after running of Statute of Limitations, 116 C 29

right of action on demand note accrues at once upon execution and delivery, 116 C 557

indorsers or guarantors of note by waiving demand, notice of nonpayment and protest became immediately liable upon it, 116 C 557

when minor child is injured two causes arise: one in the child, the other in the parent for services and expenditures, 119 C 75

——right of parent is independent and judgment for child would not preclude his recovery except in special circumstances, 119 C 75

——if child has no right to recover for personal injuries parent cannot recover for services, 119 C 75

——act or omission must be one which law holds to be legal wrong, 119 C 75

——unless conduct of owner or operator of car falls within terms of guest statute, it does not constitute wrong to minor guest and hence not basis for recovery by parent for services, 119 C 75

——negligent act of owner or operator invaded rights of parent, since guest statute made no reference to anyone except person transported (dis.), 119 C 81

determination whether there is a cause for divorce is to be made as of the time of trial, 121 C 502

ordinarily landlord not liable for nuisance created on premises where it did not exist when they were leased or was not a result reasonably to be anticipated, 121 C 579

no action lies for damages due to a nuisance which arose after action was brought, 121 C 579

when cause of action arises under indemnity agreement, 122 C 20

plaintiffs had right to sue on indemnity agreement in disregard of any right to avail themselves of collateral security, 122 C 21

holder of note secured by mortgage may sue on it, disregarding mortgage, 122 C 313

where no practical benefit could follow from determination of question, not incumbent on court to decide it, 122 C 666

under our common law there is right of action against one who negligently kills or injures dog, at least where properly registered, though act is unintentional, 127 C 686

——action for negligent killing not within statute making liable anyone who shall "unlawfully kill or injure" registered dog, 127 C 686

——but right to such action is implicit in another statute which recognizes right of property in dogs, 127 C 686

demurrer on ground that action is prematurely brought lies only when this appears on face of complaint, 128 C 12

if plaintiff requires any aid from an illegal transaction to establish his demand, he cannot recover it, 128 C 195

no recovery is permitted for fright or mental disturbance where there is no outward manifestation because such mental states do not constitute legal injury, 128 C 235

right of married woman to recover expenses incurred by reason of injury in absence of statutory waiver by husband, 128 C 527

§ 3. Joinder; Consolidation; Pendency of Another Action

counts in contract and tort cannot be joined, 2 R 255, 2 D 418

counts for injury to property, and consequential injury to person, *held* a misjoinder unless alleged to be for same cause of action, 19 C 126

act of 1875 permitting joinder of counts in contract and tort, 47 C 261

Practice Act permits joinder of foreclosure with count to set aside or postpone earlier trust deeds, 49 C 302

Practice Act and rules allow both legal and equitable relief on same facts, 52 C 197, 68 C 204

two suits for the same subject-matter and between the same parties cannot be maintained if matter can be effectually determined in one, 59 C 503
——whether question be de legal or equitable rights, 59 C 503
executor asking construction of will cannot join count for distinct cause in which he appears as trustee, the plaintiff being a different person and the causes being separate and distinct, 60 C 399
"transaction" under Practice Act must consist of what, 63 C 551
——must involve an act or agreement, or acts or agreements, connected with each other, by which the legal relations between the parties affected are altered, 63 C 551
——term applies equally to all grievances whether by violence, neglect, or breach of contract, 63 C 551
——a complaint setting forth breach of contract and a consequent conversion, in a single count, *held* to constitute but a single transaction, 63 C 551
——the two causes were properly united and could be heard together, 63 C 551
——order of court during trial that plaintiff elect under which claim to proceed, *held* error, 63 C 551
"separate and distinct" causes of action are such as are separable by some distinct line of demarcation, 63 C 563
one cause cannot be split into two; pendency of action, or judgment for part bars action for rest, 68 C 458, 70 C 711
——as in action to recover balance over on an agreement to repay advances by partner from accounts collected, 68 C 458
but two causes may arise out of one transaction, 68 C 473
asking both legal and equitable relief, 72 C 554, 77 C 214, 80 C 685, 83 C 109, 85 C 159
causes for personal injury to plaintiff, and failure of defendant to employ him as agreed, properly joined, 73 C 423
causes of action for fraud in obtaining property, and breach of contract of exchange, 73 C 459, 83 C 109
may combine causes in complaint for loss occasioned by unlawful loans, action under statute forbidding unsecured loans by insurance company and action under statute penalizing officers consenting to the loans, 74 C 474
only one action for one cause at one time, 76 C 542
action of replevin and on replevin bond, 76 C 683
causes distinct, if bills of particulars differ, 78 C 310
causes of action by creditor against stockholder in dissolved corporation for unpaid balance of subscription, at common law, and under statute, and for refunding of capital wrongfully paid over, properly joined, 78 C 575
two actions not to be brought where all questions can be determined in one, 81 C 246, 82 C 2, 83 C 634
discretionary with court to consolidate pending actions, 82 C 2
action to establish claim against estate for trust fund misappropriated by intestate, and to enforce claim against distributees, properly joined, 83 C 75, 93 C 558
judgment creditor defrauded by voluntary conveyance entitled to damages against wrongdoers and to have conveyance set aside in a single action; right to have case put on jury docket, 83 C 112, 100 C 712
prayer for damages and injunction may be joined in trespass, 85 C 159
validity of mechanic's lien set up as a defense may be determined in action to recover by builder against owner, 90 C 7
party who fails as to claim for equitable relief may pursue claim for damages, 90 C 281
action for salary may include damages for breach of contract, 90 C 695
count for setting aside of voidable deed may be joined with one in ejectment, 93 C 368
joinder of different causes of action in complaint asking for declaratory judgment and consequential relief, 98 C 794, 107 C 117
all courts administer legal and equitable rights and apply legal and equitable remedies, 99 C 216
joinder of causes of action against bailee for conversion and for negligent injury to the property, 99 C 529
damages for fraud and setting aside fraudulent conveyance may be sought in one suit, 100 C 712
related controversies should be litigated in single action, 102 C 96
negligence and wilful striking, distinct causes, though joined in one complaint, 102 C 676
distinct causes may arise out of one transaction, 103 C 403
——action on contract for its breach and against party who induced it for fraud, 103 C 403
same state of facts may give rise to action for negligence and action for breach of contract, 103 C 716
several liability not affected by joint suit or joint judgment, 104 C 107
in ejectment demands for equitable relief may be joined to those for damages and possession, 104 C 318
contract and tort actions arising from same transaction; when tort duty dependent on existence of contract duty, 105 C 151
where respective liability of sureties on two bonds are uncertain, the causes of action may be joined, 105 C 230

where two causes of action relied on, jury must be instructed that plaintiff can recover on proof of either, 105 C 476
that existence of easement is an issue in one pending suit, does not prevent its adjudication in another where necessarily incident to right there claimed, 105 C 662
legal and equitable causes, of whatever nature, may be joined and judgment rendered upon any rights of action supported by facts alleged, 107 C 207
may litigate in one action all claims arising out of same transaction or transactions connected with the same subject of action, 110 C 214
plaintiff may seek judgment for damages against debtor and setting aside fraudulent conveyances against those receiving them in one action, 114 C 226
complaint setting up action under statute for defective highway and one under common law for nuisance, 115 C 109
contributory negligence is a defense for cause of action based upon violation of statute forbidding reckless operation of automobile, 116 C 471
——but is not a defense for cause of action based upon reckless misconduct, 116 C 471
——joining action for reckless misconduct in such a case discountenanced, 116 C 471
two actions should not be brought where whole controversy can be determined in one, 117 C 452
that amount due contractor from owner is an issue in pending action does not prevent its determination in action by subcontractor to foreclose lien, 118 C 220
foreclosure of mortgage and action on note are regarded as separate and distinct causes of action, though both may be pursued in foreclosure suit, 120 C 670
action for accounting of trust funds in Superior Court when proceedings on final account of trustee are pending in Probate Court, 121 C 388
where nonresident receiver sought declaration of his right to enforce stockholders' liability or appointment of ancillary receiver for that purpose and also judgment against stockholders, joinder of causes of action not improper, 121 C 226
——but that joinder cannot obliterate the necessity of proper procedure as to each cause of action, 121 C 226
while statutes and rules authorize joinder of both legal and equitable matters and claims for relief in same complaint, distinction between equitable and legal causes has not been abolished, 122 C 507
joinder of two causes of action in one complaint does not necessarily require that they be tried together, 126 C 688
plaintiff had right to trial of issue of fraudulent conveyance, after foreclosure and deficiency judgment rendered, where both causes of action were joined, 126 C 688
rule that two actions shall not be brought where complete justice can be done in one, is not of unbending rigor, 127 C 150
——so action for injunction against defendants for violating court's restraining order allowed, though contempt procedure was available, particularly in absence of plea in abatement, 127 C 150

§ 4. Commencement; Suspension; Revival

case discontinued for nonappearance of both parties can be revived only by consent of parties, K 361
action is commenced when service is made on defendant, 1 R 487, 4 C 152, 6 C 29, 7 C 564, 9 C 535, 17 C 215, 36 C 319, 38 C 551, 41 C 485, 63 C 474–477
——attachment without service on defendant insufficient, 17 C 216
may be brought to adjourned term, 10 C 488
addition of new parties defendant does not affect pendency; suit regarded as pending from inception, 52 C 407
——foreclosure for nonpayment of interest; addition of claim for principal does not affect pendency, 52 C 407
may be commenced at any time except Sunday, 73 C 227
death suspends action when, 74 C 729, 85 C 573, 88 C 100
effect of plaintiff's death on execution issued on judgment recovered before his death; dating proceedings back, 79 C 685
insolvency suspends action against an estate in Probate Court and releases attachment, 90 C 323
suit dismissed for want of jurisdiction in United States court can be commenced anew in state court within one year, 93 C 412
where debtor gives note for debt payable at future time an agreement is implied to forbear to sue on the original debt during term of note, 114 C 94
——where collateral security is given for debt, quaere, 114 C 94
date when writ was served, not its date or return day, marks time when action was begun, 119 C 501
time when action is regarded as having been brought is date of service of writ on defendant, 128 C 107
when counterclaim is filed as part of answer within time provided in rules, filing of answer is commencement of action set up in counterclaim, 128 C 107
——if not filed within that time, the receipt by the plaintiff of notice of filing of motion for permission to file answer, with counterclaim recited in or appended to it, marks commencement, 128 C 107

§ 5. Survival

action does not survive when one joint defendant dies before service on either, 1 R 487

action survives against surviving joint covenantor, 1 R 543

suit does not survive to representatives if petitioner dies pending suit, 2 R 259

action for quare clausum fregit for trespass in intestate's lifetime survives to administrator, 1 D 180

executor cannot recover expenses of his testator in defending vexatious suit, 1 D 285

death of appellee pending writ of error, 5 D 338

——administrator may appear and waive notice, 5 D 338

action survives to administrator of assignee of bankrupt, when, 8 C 233

plaintiff's death after verdict and pending motion in arrest does not defeat the suit, 18 C 207, 208

——whether action be one that survives or not, 18 C 207

administrator of party filing motion for new trial may prosecute same, 25 C 80

none exists at common law for damages for causing another's death, 25 C 272

——insurance company cannot recover from railroad sum paid on life of one negligently killed by railroad, 25 C 271

administrator may continue suit if any of the causes survive, 27 C 328

action based on contract though tort in form, survives, 27 C 331

action for a false warranty survives, 27 C 330

by statute action survives where death is instantaneous, 30 C 187

sheriff's death does not affect suit against him for deputy's default, 30 C 354

husband cannot continue suit for injury to wife's land after her death, 33 C 41

same cause of action survives that was pending at decedent's death, 33 C 55

motion for dilatory appearance by administrator *held* made too late, 36 C 348

statute de entry of administrator or executor applies to appeals from probate, 41 C 329

death of one defendant pending motion in error from judgment in ejectment does not affect suit, 47 C 477

action for president's wilful neglect to make annual returns does not survive against his executor, 48 C 16

wrongful conversion or release of collateral security does not die with the wrongdoer, 51 C 156

——executor liable to account to owner for value of security thus released, 51 C 156

under statute, administrator should enter at next term after death of plaintiff, 56 C 173

——court has discretion to allow entry later for good reason shown, 56 C 173, 77 C 347

of tort action after defendant's death; fraudulent representation by woman to induce marriage, 65 C 397

action for injury immediately causing death survives to representatives of deceased, 72 C 617, 73 C 616

action does not survive dissolution of corporation, 73 C 151

effect of death of plaintiff pending appeal, 74 C 730

survival of ejectment, 75 C 8

survival at common law and under statute, 75 C 10, 77 C 383, 87 C 301

of action to enforce payment of stock subscription, 78 C 595

action for fraudulent sale of land under order of court survives to administrator, 81 C 127

personal representative of one killed by negligence in another state can sue here, 83 C 278

not abated by death of defendant after judgment, 85 C 573

in assault that caused death, action brought for the assault before death can be continued after death as one action, 87 C 301

——damages are recoverable for both death and assault, 87 C 301

under statute recovery not limited to death caused by negligence, 87 C 301

——applies to all cases of death by wrongful act, 87 C 301

action exists for death whether intentional or not, 87 C 302

action continued after death against executrix by scire facias, although estate is insolvent, 88 C 100

action at common law abated by death of defendant, 88 C 100

one year limitation in survival statute does not shorten limitation; gives at least that time, 90 C 611

in action on joint and several bond, if one dies, can continue against the other, 91 C 342

action for death conditioned on being brought within one year, 91 C 395

action by conservator in own name survives on death of ward through his administrator, 91 C 680

survival is rule, not exception; action presumed to survive if not within an exception, 91 C 683

action for statutory penalty may survive if the statute so provides, 96 C 362

option to purchase real estate, under seal, but without consideration, does not survive to representatives of person to whom given, 97 C 193

nature of survival of action as regards defendant, 98 C 201

action for undue influence survives against administrator of wrongdoer, 98 C 204

right of administrator of defendant to enter of his own accord, 98 C 211
——so entered, he stands in shoes of deceased, 98 C 211
——change in plaintiff and amendment of complaint nil sig., 98 C 211
statute de survival of rights of action and causes of action applies to workmen's compensation, 105 C 398
statute as to survival of causes of action applies to substance of rights, not to remedy, 107 C 174
——hence of no avail as regards tort committed in another State, 107 C 174
——but so much of statute as provides for survival of pending action applies to remedy and if action is once begun here, death of defendant will not defeat it, 107 C 174
action for negligence occurring in New York cannot be maintained after wrongdoer's death, 107 C 174
wrongful death statute does not create new cause of action; it is merely a survival statute, 108 C 645
right of appeal from Probate Court survives on death of party after hearing but before decision, 110 C 646
——administrator may enter and prosecute appeal, 110 C 646
action in behalf of beneficiaries under Federal Employers' Liability Act arises from statute, not by process of survival, 111 C 196
——extinguished by death unless immediately before death decedent could have maintained it, 111 C 196
where plaintiff in negligence action died from cause not growing out of accident, damages recoverable are the same as he would have been entitled to if living, 113 C 460
rights given by statute are such as survived decedent, and of which he died possessed, 116 C 91
amendment relates back to the beginning of an action, 117 C 638
——hence where one who should have been named party had died after action brought, amendment should name him as party and bring in his executor by scire facias, 117 C 638
statutes de survival of actions contain no limitation of time within which executor or administrator of deceased defendant may be cited in, 120 C 111
——six months for entry of executor or administrator merely fixes time he may enter of right; court may permit him to enter at later time, 120 C 111
——so late citation to representative of deceased defendant may be permitted at discretion of court, 120 C 111
——unless objection is seasonably made case will not be erased from docket, 120 C 111
——whatever objection there may be to the late citation, court is not deprived of jurisdiction of subject-matter of action by delay, 120 C 111
——and in present case any claim of lack of jurisdiction over person of defendant effectually waived by filing of counterclaim, 120 C 111
where since taking appeal defendant B had died and no representative of his estate appointed, Supreme Court could enter no judgment which would affect his estate, 121 C 640
——but B not affected where defendant D Co.'s appeal was dismissed by trial court and this action affirmed in Supreme Court, 121 C 640
history of statutes concerning survival of causes of action for death due to personal injury reviewed, 122 C 80
——whether action for death due to highway defect falls within statute, "whether caused by the negligence of the defendant or by his wilful, malicious or felonious act," quaere, 122 C 80
——in any event it survives by reason of general provision for survival of all causes of action for death due to personal injuries, aside from exception, 122 C 80
claim of wife against estate of husband for expenditures made for support is within survival statute, 124 C 543
common-law rule, generally applicable, is that no action lies for damages resulting from death of human being, 125 C 635
action for pain and suffering before death survives to executor or administrator, 127 C 380

§ 6. Withdrawal

after withdrawal, entry for costs at later term is not permitted, K 270
not allowed after verdict is returned, K 273
——nor after return of arbitrator's or auditor's report, K 273
court not concluded by clerk's entry of "done," 1 R 439
allowed at any time before verdict is returned, 1 R 552
party of record may withdraw suit, even to the prejudice of party in interest, 12 C 349
court need not be notified of, 14 C 188
never becomes matter of record in this State, 14 C 185
submission to arbitration is not a withdrawal, 21 C 537
highway petition may be withdrawn until report of committee is drawn and signed, 25 C 136
plaintiff must withdraw action against one defendant and take judgment against the other where a several liability only exists against one defendant not served with process, 31 C 217

right of, not affected by set-off, 43 C 61
not allowed after committee's report is signed and lodged with clerk of prevailing party, 47 C 438
judgment for costs on withdrawal, regarded as rendered at time of withdrawal, 48 C 305
on withdrawal, not bound to notify defendant, 48 C 306
notice of, on return day but before hour in justice suit *held* only notice that plaintiff would not appear, 57 C 274
——plaintiff cannot by withdrawal deprive defendant of judgment for costs, 57 C 274
stipulation for withdrawal of action construed; "claims," "offsets," "defenses to the merit," 65 C 529
statute as to taxing costs on withdrawal of action applies to action withdrawn before return day, 70 C 380
withdrawal of action after filing set-off, 76 C 530
plaintiff may withdraw action without knowledge of attorney even in contingent case, 78 C 659
after counterclaim, 80 C 218
withdrawal after answer filed as creating estoppel, 80 C 507
when privilege of withdrawal can be exercised; when it ceases, 85 C 664
a voluntary filing of amended or substituted complaint, after demurrer sustained, is a withdrawal of the original complaint, 93 C 479
statement of counsel that no claim will be made under certain count as equivalent of withdrawal, 107 C 380
proceedings for reorganization of owner of equity in federal court under bankruptcy act did not oust Superior Court of jurisdiction to vacate its foreclosure judgment and allow withdrawal of action, 123 C 10
opening of foreclosure judgment and withdrawal of action *held* appropriate procedure in view of reorganization plan adopted and well within discretion of court, 123 C 10
——and no rights of appellant, who was subtenant of lessee claiming right to be foreclosed out, were invaded, 123 C 10
where case withdrawn, either after commencement of hearing "by leave of court for cause shown," or voluntarily without such permission, case is still in court, though removed from docket of active cases, 123 C 166
court has jurisdiction upon proper showing to restore to active docket case which has been voluntarily withdrawn, just as it can open judgment or restore to docket case which has been erased, 123 C 166
——but, for same reasons as in latter two situations, such restoration may not be made after expiration of term at which withdrawal was filed, 123 C 166
where plaintiff moved restoration of case to docket at term subsequent to its withdrawal defendant, by contesting motion on its merits, waived any lack of jurisdiction on part of court, but did not waive right to claim action of court in granting motion erroneous, 123 C 166
——remedy of plaintiff, if any, was by petition for new trial or by proceeding in equity, 123 C 166
provisions of statutes concerning withdrawal, 123 C 168
——withdrawal by plaintiff does not impair right of defendant to prosecute cross-complaint or counterclaim, 123 C 168
——in such a case action is still pending and plaintiff may reinstate claim, in spite of withdrawal, 123 C 169
general authority of attorney does not empower him, unless expressly authorized by client, to discontinue or withdraw case where ultimate rights of parties are thereby terminated, 125 C 206
——but in present case *held* conclusion that plaintiff assented to withdrawal could not be successfully attacked, 125 C 206

ACT OF GOD

See also CARRIERS § 3

term includes what, 1 C 491
act of God excuses a loss whether repeated in bill of lading or not, 12 C 419
common carrier liable for all losses except those arising from act of God or public enemy, 15 C 539
excuses a failure of duty imposed by law, never where duty is created by positive contract of the parties, 25 C 536
builder of dam bound to provide for ordinary freshets, and not extraordinary freshets, nor extraordinary results, 51 C 137
as defense to injury claimed to be due to negligence, 105 C 647
unprecedented storm as defense to action against city for causing overflow of stream by discharge of sewage into it, 106 C 167
must be sole cause and one which foresight could not reasonably be expected to provide against, 106 C 167
——city liable if its fault concurred, 106 C 167
act of God if sole cause of damage exempts defendant from liability for negligence, 116 C 496

——but it is duty of defendant to avert disaster by such means as might reasonably be utilized under circumstances, 116 C 496

——failure to act thus may be contributory proximate cause and substantial factor in resulting injury, 116 C 496

——liability of defendant thus governed by test applied in all negligence actions, 116 C 496

storm of unprecedented violence *held* to have been act of God causing injury to bridge by breaking away of boats and defendants *held* to have done all that reasonably prudent men would have done under circumstances, 116 C 497

term comprehends "all misfortunes and accidents arising from inevitable necessity, which human prudence could not forsee or prevent," 116 C 502

as defense by municipality in suit for damages from storm waters, 124 C 341

where damage caused directly and exclusively by act of God, it could not be due to negligence or nuisance, 125 C 76

burden as to defense of act of God upon defendant, 125 C 81

to exonerate owner of vessel which broke from moorings during hurricane, act of God must be sole cause of damage, 126 C 534

ADEMPTION

See Wills § 64

ADEQUATE REMEDY AT LAW

See Equity § 5; Injunction § 2; Mandamus

ADJOINING LANDOWNERS

Note: Cases involving rights and liabilities of owners of land abutting highways and railroads will be found under Highways §§ 8 and 16; Railroads § 7; those relating to boundaries, under Boundaries; to fences, under Fences; to party walls, under Party Walls; and to the liability for injury by fire spreading to adjoining land, under Fires.

See also Deeds § 8; Easements

not joint owners of tree on land of one, overhanging land of the other, 11 C 182

may cut off overhanging branches of tree, if a nuisance, 11 C 184

——no right to convert branches or fruit to own use, 11 C 185

where party negligently leaves noxious substances on his land, which are washed by the rain along the surface of the ground into his neighbor's well, corrupting the water, he is liable, 27 C 83

have no right by grading to turn surface water on adjoining land, though for lawful purposes and without malice, 34 C 467

one cannot enter neighbor's land to turn flow of surface water, though it endangers house wall, 41 C 160

where structure maliciously erected and was injurious to adjoining owner, no defense that it served to screen defendant's premises from observation, 46 C 106

statute de malicious erection of structures to annoy adjacent landowners; question determined by character, location and use, not by inquiry into motive, 48 C 387, 75 C 423

right to lateral support is incident of ownership of land and its infringement is nuisance against which equity will ordinarily enjoin, 52 C 190

owner may change surface of land and erect obstructions to prevent inflow of surface water though effect is to set it back upon adjoining land, 55 C 350

——immaterial that part of high fence to prevent flow of surface water is on portion of division line which adjoining proprietor was to fence, 55 C 350

where branches of tree extend over adjacent owner's land, he may lop them off up to his line even though that is practically to the trunk of tree, 65 C 365

injunction de tree and well on boundary line *held* properly refused, 67 C 538

school district liable for discharging water on land of private owner, 72 C 564

liability for discharge of collected rainwater on another's land, 73 C 528

landowner may remove projection over his land or apply for injunction, 75 C 662

injunction against obstruction of ditch dry part of year, 77 C 345

liability if land caves in from own weight; none if due to building on it, 82 C 126, 90 C 108
whether lateral support can be acquired by prescription, quaere, 82 C 126
entitled to have soil supported in natural state, 82 C 518, 92 C 18
interrupting flow of surface water by a ditch does not, in absence of prescription, compel the one ditching to keep it in repair, 83 C 59
the right of eaves-drip upon adjoining property, unlike right to discharge surface water, is not inherent in or appurtenant to ownership of land, 89 C 359
——can be acquired only by grant or prescription, 89 C 359
adjoining owner at lower grade not bound to receive surface water from upper owner; can grade to keep it out, 90 C 108
retaining wall part of realty with incidents and ownership of same, 92 C 18
when obligation to maintain retaining wall runs with land, 92 C 18
must use care of ordinary prudent man not to injure building of neighbor when removing soil from own land; charge upheld, 94 C 167
not bound to support building on adjoining land as distinct from the land, 94 C 167
duty of person erecting building to ascertain and respect correct line, 96 C 346
landowner cannot collect rainwater on his roof by conductor or otherwise and discharge it on neighbor's land, 96 C 686
——even though it first runs over a walk and strip of former's own land, 96 C 686
——reason of rule, 96 C 686
right of lateral support does not extend to buildings, 99 C 40
——but one excavating soil must use reasonable care, 99 C 40
——notice to owner of intended work and its effect, 99 C 40
evidence *held* to justify finding as to location of boundary line, 100 C 218
negligence in maintaining barbed wire fence so near boundary that children coasting are injured, 101 C 545
hedge may be a fence; rights of adjoining proprietors as to cutting and trimming it, 108 C 97
rights of adjoining owners with respect to tree on boundary line, 108 C 97
plaintiff claimed that moisture in his store was result of steam escaping from radiator in defendant's adjoining premises; res ipsa loquitur *held* applicable, 108 C 115
right of landowner to use property despite effect on adjoining land or flow of surface water therefrom; right of upper proprietor to have natural drainway kept open; limitations, 114 C 182
landowner may not use land in such a way as to increase volume of surface water flowing on adjacent property, 114 C 182
landowner by building obstructed natural depression ten inches wide and six inches deep which drained water from adjoining land; *held* not actionable, 114 C 182
landowner by filling his land unevenly caused water to drain on adjoining property in greater volume; injunction properly granted, 114 C 182
defendant liable for damages to plaintiff's premises from washing of dirt through rocks onto them due to leveling of former's lot, 115 C 721
injunction to restrain leakage of oil from defendant's premises into plaintiff's basement refrigerator rooms, 121 C 579
——finding that defendant's tanks had been tested and no oil leaked out, not sustained, 121 C 579
——that evidence did not preponderatingly show source of oil as defendant's premises, stricken out, 121 C 579
there is no sound basis for distinction between pollution due to water which percolates through soil and that due to water which runs in underground streams or channels, 121 C 579
history of early law as to rights of landowners in subterranean waters, 121 C 586
——present tendency to qualify absolute right of landowner to immunity from liability for interference with percolation or flow of subterranean waters, 121 C 587
——so one may be liable for pollution of well upon adjoining property by percolation of water beneath surface, 121 C 587
——no liability attaches unless injury to adjoining proprietor is under circumstances naturally to be expected or is known or should have been known, 121 C 587
——if pollution of subterranean water constitutes nuisance it is immaterial whether or not person responsible has exercised reasonable care, 121 C 588
——and in present case as percolating of oil into plaintiff's premises would be nuisance, unnecessary for it to prove negligence, 121 C 588
right of lateral support not insurance that nothing will happen to adjoining land that will interfere with right, but rather that adjoining owner will do no act which will cause such interference, 127 C 403
where lateral support was destroyed by excavation made by hurricane and through no act of defendant's, latter under no duty to restore it, 127 C 403
nature of lateral support discussed, 127 C 405
if owner fills in his land right up to boundary line, builds retaining wall and uses top of it for passway, adjacent owner not under duty

to build and maintain fence on wall to protect someone from falling down onto his land, which remains at natural level, 129 C 626

ADMINISTRATION OF ESTATES

See Estates of Deceased Persons; Executors and Administrators; Probate Court; Wills

ADMINISTRATIVE BOARDS AND COMMISSIONS

See also Committees and Referees; County; Gasoline Stations; Intoxicating Liquor; Licenses; Public Utilities Commission; Unemployment Compensation Act; Workmen's Compensation; Zoning

nature of "appeals" from legislative and administrative boards, 72 C 6
administrative boards not bound by strict rules of evidence, 75 C 238
Superior Court can restrain unlawful exercise of legislative or administrative powers by executive officers, municipal councils or administrative boards on appeal, 80 C 623
action of an administrative body reviewed only if illegal abuse of power, 84 C 26
where there is doubt as to jurisdiction of administrative board, motion to dismiss the proceeding before it for want of jurisdiction should be denied, 85 C 517
legislative discretion cannot be delegated to an administrative tribunal, 89 C 529
Legislature prescribes primary test and standard and can leave with administrative tribunal to carry it out as an executive duty, 89 C 529
public utilities commission is an administrative tribunal; defects in a petition no objection to it, 91 C 135
——its discretion not unrestrained, 97 C 733
power and function of courts in reviewing action of administrative commission, 97 C 453, 113 C 502
presumption that administrative boards have acted fairly, with proper motives and upon valid reasons, not arbitrarily, 113 C 139, 124 C 57
on appeal under statute from administrative officer, sufficient for appellant to allege he is aggrieved, 109 C 583
——court may thereafter order reasons of appeal filed, 109 C 583
——if order is unlawful or beyond power of officer or so unreasonable as to justify judicial interference it may be set aside, 109 C 583
——and court must necessarily have jurisdiction to decide facts involved in that issue, 109 C 583
——nature of such appeals, 109 C 583
nature of appeal from administrative action, 110 C 80
——does not result in trial de novo, 110 C 80
——question is, did administrative officer act arbitrarily, illegally or so unreasonably, as to constitute abuse of discretion, 110 C 80
unless it is found that administrative board acted arbitrarily, unreasonably, in abuse of its power or illegally, court cannot interfere, 118 C 71
burden to show that administrative board acted improperly is upon the appellant, 118 C 174
administrative board such as zoning board of appeals not required to give reasons for its decision or make formal finding of facts, but it is wise and proper to do so, 120 C 454
authority of administrative body acting under grant of power to make rules to enforce and carry out intent of statute is limited to making reasonable rules and regulations within scope of power granted, 123 C 32
in absence of legislative restrictions, committee or commission can take valid action at meeting at which all members have proper notice and at which majority are present, 123 C 281
——where it is required that particular action can be taken only by unanimous vote, it is generally sufficient if all those at meeting duly called, constituting quorum, shall vote in favor, 123 C 281
technical rules not to be applied to administrative boards and commissions too rigorously, 123 C 283
exercise of discretion by administrative board cannot be sustained on basis of conclusions reached unless those conclusions based on circumstances which reasonably justify them, 123 C 288
action by should be definite, precise and, upon face, within terms of law, (dis.) 123 C 542
statutory appeal from decision of registrars in dropping name from party list or refusing to enroll is original proceeding in nature of mandamus rather than appeal, 124 C 271
on appeal, decision of administrative board may be attacked on ground that it was not

warranted by facts appearing in board's records, or that conclusion could not be reasonably reached on evidence before it or on basis of determination by court of what facts really were, 124 C 525

Legislature, having by enactment declared policies and fixed primary standards, may validly confer on administrative officers power to fill up details by prescribing rules and regulations, 125 C 301

provision in § 87 of charter that decision of judge hearing an appeal shall be final is not applicable under § 21 of civil service law, though latter provides for appeal "in manner prescribed" by § 87, 125 C 345

appeal to courts from decision of administrative board is process to determine whether board has acted arbitrarily or illegally or so unreasonably as to have abused discretion, 126 C 237

——discretion a liberal one, to be overruled only when board has not acted fairly, with proper motives, and valid reasons, 126 C 237

rule-making power of liquor control commission is subject to review and if exercised arbitrarily, unreasonably, or in abuse of power will be set aside, 126 C 454

statutes and special laws fixing brief time for appeal from administrative boards are designed to secure speedy determination of issues and make it possible to proceed in the matter, 126 C 602

extent of right of General Assembly to delegate powers to, 126 C 623

practice with reference to appearance of administrative boards as defendants in appeals from their decisions, reviewed, 127 C 16

administrative boards differ from courts in that they frequently represent public interests, 127 C 16

——appeals from decisions of former in different category than those from lower to higher court, 127 C 16

——such appeals not means of transferring jurisdiction from one tribunal to another but is process to determine whether board acted legally and in proper exercise of discretion, 127 C 16

administrative board, where it represents public interest entrusted to its care, may, as such, be made or appear as party defendant in appeal taken from its order or, where trial court has overruled its decision, prosecute an appeal to Supreme Court, 127 C 16

where no statutory or charter provision, in appeals from boards charged with duty of preserving interests of public, citation to board as such, served either on secretary or its individual members, to appear and answer complaint, is proper procedure, 127 C 23

——other adverse interests should be summoned in, 127 C 23

——similar practice in appeals from public officers as mayor, highway commissioner, tax commissioner, 127 C 24

——where function of board or municipal officer goes no farther than to determine rights of parties before it, such as board for assessment of benefits and damages, no occasion to make board a party and citation should run to municipality concerned, 127 C 24

function of court in reviewing proceedings of an administrative board, discussed, 127 C 175

administrative officer of board should not ordinarily review decision and revoke action once taken; but where change of conditions has occurred and no vested rights intervened, it is reasonable and appropriate that matter be re-examined, 128 C 20

——so where commissioner of police restricted capacity of open air theater to three hundred because city's counsel ruled it was a building within code, and subsequently court held it was not a building, proper for him to change decision, 128 C 21

right of administrative official to change decision for due cause not open to question; attorney general's advice as constituting such cause, 128 C 91

——doctrine of res adjudicata not applicable to action of administrative official, 128 C 92

——but where it appears that it is against public policy that he should change a decision with retroactive effect, it is court's duty to curb his powers, 128 C 92

where all evidence and the finding of liquor control commission was before court, it should decide the case upon it; where, however, court heard evidence and made finding and parties acquiesced, court decided case on record before it, 128 C 114

investigation by commission and finding based on it rather than evidence might result in violation of requirement of due process that one called upon to answer shall be confronted with evidence against him, 128 C 119

mayor's denial of certificate of approval of location for gasoline station subject to attack only if arbitrary or so unreasonable as to be an abuse of discretion, 128 C 264

permission to offer further evidence may be granted in pending proceedings; when offered, it is to be considered with that heard at original hearing, 128 C 304

function of Superior Court upon appeal is to decide whether board acted illegally, as upon hearing without notice, or arbitrarily and in abuse of discretion, 128 C 351

——it cannot, on facts found by it or on record of proceedings, substitute its discretion for that reposed in board, 128 C 355

upon appeal question is whether liquor board acted legally and within its discretion in denying application, 129 C 281
administrative functions cannot constitutionally be vested in the courts, 129 C 642
——proper function of Superior Court in appeal from liquor control commission; effect of amendment that trial shall be de novo, 129 C 642

ADMINISTRATORS

See Estates of Deceased Persons; Executors and Administrators

ADMIRALTY

See also Boats; Carriers; Insurance §§ 13, 19; United States; Waters § 8; title Ships and Shipping in Andrews and Fowler Digest

decree of foreign court of admiralty not collaterally impeachable for fraud, 1 D 148
——conclusive evidence of rights it establishes, 4 D 185
——and of facts found therein, 4 D 185
——sentence of condemnation for breach of neutrality, 4 D 185
jurisdiction of courts of admiralty examinable in courts of general jurisdiction, 1 C 439
may protect part owner of vessel by requiring security from majority, 16 C 26
may authorize majority in interest to give security, 16 C 27
in proceeding in rem, warrant must be accompanied by citation to appear; attachment not in itself notice, 18 C 1
final judgment rendered without hearing or notice is void, 18 C 2
whether state courts have concurrent jurisdiction with United States courts in admiralty, quaere, 27 C 361
respective rights of vessel and consignee de landing place and demurrage, 55 C 597
has jurisdiction over damage done a vessel on navigable waters by a bridge or permanent structure, 62 C 576
maritime torts include wrongs suffered through negligence or malfeasance where the common-law remedy is by action on the case, 62 C 577
a seaman who has attached in a state court and sold on execution the part interest of a master of a vessel, for wages, is not barred from proceeding in admiralty against vessel for balance, 62 C 578
mere fact that a libelant has brought suit in a state court is no bar to a proceeding in, 62 C 579
a lien is a jus in re; once acquired admiralty will enforce, subject only to rules of priority, 62 C 579
——sale on former execution will waive lien when, 62 C 580
——sale of a part interest does not waive lien on remainder, 62 C 581
has jurisdiction to enforce admiralty rights according to its own rules of procedure, 63 C 604
employment on tugboat not exclusively within admiralty, 89 C 368
federal admiralty powers do not destroy common-law remedies, 89 C 368
power of State to legislate concerning maritime matters and remedies, 102 C 511
Compensation Act not applicable to maritime contracts of employment, 102 C 511
difference between "at and from" policy and "from" policy, 108 C 349
when the voyage of a ship commences so that risk under marine policy attaches, 108 C 349

ADOPTION

adoption impliedly restrained in other than statutory form, 34 C 263
adoption under Wisconsin statute, without consent of parents, where they had left State for parts unknown, 81 C 152
——though defective, may be good after child is of age; inheritance by child in this State, 81 C 152
nature of proceedings to adopt; power of State; necessity of domicil, 81 C 152
nature and effect of our adoption laws, 96 C 62
nature and effect of adoption agreement, 96 C 478
——does not prevent enforcement of antecedent agreement for payment of money in consideration of consent of adult to be adopted, 96 C 478
only means of transferring right to custody of child, 97 C 442
effect of adoption of child who would otherwise take remainder interest under will as one of class, made during life of life tenant, 98 C 337

adopted child is heir-at-law of adopting parents and relatives, 105 C 744
adopted child of life tenant *held* to be latter's "issue" and entitled to remainder, 105 C 744
is of purely statutory origin and is legal if statutory procedure is followed, 110 C 463
legislation de commitment of neglected children to temporary homes; board of management of county home is guardian to exclusion of parents; may give child in adoption without consent by or notice to parents, 110 C 463
history of adoption statutes reviewed, 110 C 463
where adoption statute is broad, testator is held to have intended to include adopted child in term "child or children," 111 C 1
——but presumption does not prevail where testator is stranger to adoption, 111 C 1
adoption prior to execution of will, or some time before testator's death; knowledge and approval of testator; intent to include adoptee as beneficiary presumed, 111 C 1
bequest to "lineal descendants" or "nearest of kin" of children *held* not to include child adopted after testator's death, 111 C 683
where testator is adopting parent he is presumed to include adopted child in use of word "child," 111 C 683
general statutes of distribution are to be read with statute of adoption, 115 C 163
——child adopted under our statute not being able to inherit from natural parent is not included within term "children" within statutes of distribution, 115 C 163
child adopted under Michigan statute, which does not take away right of inheritance from natural parents, *held* entitled to share in estate of natural father who dies here, 155 C 163
at common law, adoption did not affect right of inheritance from natural parent, 115 C 163
right of adoption not embodied in common law of England or United States, 118 C 204
——history of legislation in this State, 118 C 204
rights of inheritance of adopted child from collateral kin of adopting parent, 118 C 202
——not to be implied and is to be recognized only if expressly conferred, 118 C 202
——right is to be determined not by law in force at date of adoption, but that in force at date of death of adopting parent or relative, 118 C 202
——adoption statutes to be read in connection with statutes of distribution, 118 C 207
——law not retrospective but prospective, 118 C 210
——and in present case grandchildren of adopted child *held* entitled to inherit from sister of adopting parent under law in force at date of sister's death, 118 C 202
appeal would lie from decree of Probate Court concerning adoption of child, 122 C 333
as revocation of will, 126 C 369 and see WILLS
"issue" does not include adopted child in will unless circumstances indicate testator so intended, 127 C 469
——review of cases de adopted children, 127 C 473

ADULTERY

See also DIVORCE § 6

testimony thought by jury sufficient to convict is conclusive of verdict even if court of different opinion, K 87
solicitation to commit adultery is a high crime and misdemeanor, 7 C 270
general character of plaintiff is not in issue; character as a husband is in issue, 9 C 174
plaintiff's rank and condition is inadmissible to enhance or diminish damages, 9 C 174
injury to marital rights is the foundation of action, 9 C 174
plaintiff's unkind treatment of wife *held* admissible, 9 C 174
——improper familiarities of wife with other persons, 9 C 174
evidence of unkindness of husband raises no inference of conspiracy against wife's chastity, 10 C 224
——nor does it rebut presumptive evidence of wife's adultery, 10 C 224
testimony of more than one act of adultery inadmissible under single charge of adultery, 10 C 372
that wife was seductress no defense, 76 C 140
ocular evidence of actual adultery or facts justifying reasonable belief that it is actually being committed reduces murder to manslaughter, 87 C 5
——contra, when provocation is expected, but has not actually occurred at time of homicidal act, 92 C 58
adultery condoned by wife is no offense against marital relations, 90 C 93
contracting venereal disease as evidence of, 90 C 95
words charging one with adultery are actionable per se, 92 C 236, 95 C 482
alienation of affections does not necessarily

involve adultery but may be established by it, 95 C 556
adultery is an action independent of one for alienation of affections, 95 C 556
basis of action and damages, 95 C 557
adultery as excuse for husband's failure to support wife, 100 C 728
adultery of respondent *held* an infamous crime and indicative of moral unfitness for profession of law, 112 C 270
where plaintiff claimed recovery in one action for alienation of affections and criminal conversation, with loss of consortium from both, jury should be warned against giving damages under both for same loss, 117 C 206
rule that where there are two or more counts in a complaint and verdict is general, it will be sustained if there is no error as to one only, applies where damages recoverable under both would be the same, 117 C 206
——does not apply where one count is for alienation of affections and the other for criminal conversation, 117 C 206
an action for criminal conversation is barred in six years, 117 C 212
rule of damages, 117 C 212

ADVANCEMENTS

See Wills § 64

ADVERSE POSSESSION

§ 1. In General
2. Particular Cases
3. Evidence

Note: Cases dealing with acquisition of easements by prescription are listed under Easements § 4.

§ 1. In General

adverse possession for fifteen years with actual ouster bars title, 1 R 68, 3 D 259
——whether by same person for whole period or by different persons for different periods, 3 D 259
not necessary that lands should be inclosed, 1 R 152, 413
does not run against remainderman until termination of particular estate, 1 R 547
in barring rights of entry, actions of ejectment are barred, 2 R 512
right to privilege appurtenant may be gained by, 4 D 250
disabilities accruing after right of entry accrues are not within the exception, 2 C 27, 3 C 193, 227
grant of lands conferring an entire title cannot be presumed from possession and length of time alone, 2 C 607
Statute of Limitations does not commence to run until after right of entry accrues, 3 C 191
five years allowed disabled person after removal of disability may be a part of fifteen year period, 3 C 227
adverse possession for fifteen years by construction vests fee, 5 C 298
what constitutes, 8 C 442
claim of title and denial of opposing claim not required, 8 C 442
intention to dispossess another unnecessary, 8 C 443
disseisor not affected by former condition of estate, 14 C 290
for fifteen years, vests title, 19 C 477, 26 C 202, 31 C 531, 39 C 97
——though under void deed, 26 C 202
——and by one under reservation in deed to which he was a stranger, 26 C 202
——must be connected and continuous for fifteen years, 31 C 531
——continuity effected by any conveyance from possessor, which is accompanied with actual transfer of possession, 31 C 531
possession merely not deemed adverse, 21 C 416
——aliter, if exercised under claim of title, 21 C 416
entry and possession under claim of title by void grant is adverse, 21 C 417
equity will not interfere to quiet the possession of one holding legal title by, 26 C 239
question of, to be determined by jury from all the facts, 27 C 74
actual use and occupation essential to title by, 29 C 397
adverse possession by successive occupants must be connected and continuous, 31 C 530
casual or stealthy re-entry by disseisee insufficient to overturn, 32 C 499
claim of exclusive ownership not an indispensable element of, 38 C 522
assertion or nonassertion of title how far important as indicating, 38 C 521

possession must be not only exclusive but also adverse, 38 C 565
married women can gain title by, 39 C 96
——subject to curtesy in husband, 39 C 99
——unless husband claims exclusive possession in himself, 39 C 96
possession by donee under parol gift is adverse as against donor, 39 C 97
——if continued fifteen years donee acquires title, 39 C 97
notoriety in the holding only necessary in what cases, 39 C 97
mere naked claim without hostile acts does not constitute, 39 C 392
no use in common with the public is adverse, 39 C 392
grant from State may be presumed in cases of, 39 C 393
public could not technically be disseised, but public as well as private rights may be lost by unreasonable delay in asserting them; also by abandonment, 40 C 436, 56 C 517
as between mortgagor and mortgagee, 47 C 496, 76 C 146, 223
use *held* sufficient to acquire title by, 52 C 23
where lower court does not find open and exclusive possession but only facts tending to prove, Supreme Court cannot find such possession, or whether lower court should have found it, 62 C 82
necessary elements, 74 C 107, 82 C 437, 84 C 570, 95 C 619
no claim of title necessary, 74 C 111, 84 C 570
historical account and effect of, in general, 75 C 531
possession under belief that one is owner may constitute, 81 C 133
not adverse if title is recognized in another though hostile at first, 81 C 547
deed of one ousted void against one in adverse possession, 81 C 547
whether adverse possession of personal property transfers title, quaere, 82 C 334
land orally given one and held for fifteen years is acquired by, 82 C 437
question of fact, 83 C 500, 89 C 359, 90 C 133
adverse possession is use as one's own, 83 C 627
by one not a predecessor in title does not support a claim of title, 86 C 699
whether possession was exclusive and adverse is a question of fact, 90 C 133
——a widow, before assignment of dower, is tenant in common with heirs, 90 C 133
——she may, however, hold adversely to them and thus obtain land by prescription, 90 C 133
fact use begins as result of ineffective grant emphasizes adverse character of possession, 90 C 241
is a question of fact; conclusion final if supported by subordinate facts, 99 C 67, 421
in eminent domain probable acquisition of future prescriptive title to adjoining tract not an element of compensation, 101 C 173
ouster must be open, visible, exclusive, continuous and without license, 101 C 406
must continue for fifteen years without license or consent of owner, 101 C 407
all elements of open, adverse, continuous and exclusive occupancy must exist, 102 C 83
as between grantees of common grantor, adverse possession cannot begin till death of grantor where he reserves life use of entire tract, 102 C 83
ouster by person other than grantee does not render deed void unless essentials of adverse possession exist, 104 C 285
essentials of adverse possession, 104 C 596
once it is established, interruption followed by resumption of use is immaterial, 105 C 350
adverse possession of fee must be exclusive as against everyone; of easement, only as against general public, 105 C 722
rights in highway cannot be lost by public otherwise than through abandonment, 113 C 40
essential element is whether use was under claim of right, 118 C 137
must be fifteen years duration; adverse user must be with knowledge and acquiescence of owner; to give this knowledge and acquiescence owner must be ousted of possession, ouster must be continued uninterruptedly for statutory period, and possession must be open, visible and exclusive in another, 119 C 282
as element in determining abandonment of mining rights, 121 C 43
while tenant cannot effect disseisin in landlord's favor or originate adverse possession or user unless lease includes land or easement, the inclusion need not necessarily be express; it suffices if it is impliedly included, 124 C 39
cotenant may acquire portion of tract held in common by adverse possession, 124 C 259
to secure title by adverse possession by tenant in common, his possession must be adverse not only to world at large but to his cotenants, 124 C 256
——condition satisfied by execution by them of agreement to divide farm and by their continued acquiescence in resulting occupation of section of it by tenant, 124 C 256
wrongful intent to disseise true owner is not necessary element of adverse possession, 124 C 256

§ 2. Particular Cases

for fifteen years by son bars father's right, 1 R 68

——though original possession was by father's permission, 1 R 68
possession of mortgagee not adverse, 2 R 506
as against two tenants in common, one being within saving of statute, right of other not saved thereby, 4 D 272, 466, 5 D 219
possession of ministry lands by town not adverse, when, 4 D 366
where one holds land as purchaser, although his title defective, his possession is adverse, 5 D 181, 3 C 246
for fifteen years continuously gives title, 26 C 202
——though under void deed, 26 C 202
——by one under reservation in deed to which he was a stranger, 26 C 202
possession begun under license; proper charge to jury, 26 C 362, 365
adverse possession of husband's curtesy cannot commence against wife till husband's death, 29 C 136
B's belief that center line of stone wall, standing wholly on A's land, was boundary line, not in itself sufficient to establish adverse possession, 29 C 395
possession under void deed on record characterizes it as, 35 C 437, 39 C 97
possession by tenant under agreement to buy may after performance become adverse by denying vendor's title, 38 C 266
——vendee may deny vendor's title after breach of the contract, 38 C 267
vendee of mortgage interest after long possession as mortgagee acquires a title by, 41 C 496–501
under contract of sale not adverse to legal owner, 50 C 49
——can make it adverse only by explicit acts, 50 C 50
——party in such possession a mere licensee, not a tenant at will, 50 C 51
deed of shore flats lying between upland and low watermark, no access to outer flats reserved, and no claim made for thirty years, 50 C 201–204
——deed *held* on claim of adverse possession to embrace outer flats, 50 C 204
——as appurtenant to the portion conveyed, 50 C 204
flats on shore reclaimed become upland and may be gained by, 50 C 206
of highway, may run against private right of adjoining owner, 50 C 214
——though highway never legally discontinued, 50 C 214
——and deed of selectmen admissible as giving character to possession, 50 C 214
——though passing no title, 50 C 214
exclusive use of water for fifteen years gives right, 51 C 305
——need not have been adverse to claims affected thereby, 51 C 305
possession of railroad in land condemned for railroad purposes is not adverse to reversioner, 59 C 420
a deed to a railroad company reserving the right to use farm crossings over railroad tracks is inadmissible upon question of adverse user, 60 C 29, 30
——plaintiff could under such deed have only the rights reserved therein, 60 C 30
the unorganized public cannot acquire the right of fishing either by grant or prescription, 61 C 187
persons occupying portion of sidewalk for entrances acquire no right therein by such occupation, 61 C 524
actual, open, and exclusive possession with claim of right by one tenant in common is sufficient as to other tenants, 62 C 82
——where tenant enters under warranty deed purporting to convey whole estate presumption is that he holds under deed as exclusive owner, 62 C 82
——*held* on facts not to establish presumption that possession was actual, open, and exclusive, 62 C 82
between life tenant and reversioner, 70 C 349, 76 C 595
does not run against public, but long adverse user may terminate right to lay out highway, 73 C 581
disability from infancy, 74 C 111
construction and maintenance of projecting eaves not ouster of possession; affects ownership of soil beneath after fifteen years, 75 C 664
between husband and wife; mortgagor and mortgagee, 76 C 223
between principal and agent, 77 C 578
as applied to cornice jutting over land, 78 C 405
possession of landowner not adverse to assessment lien, 79 C 38
the grantee of a clearly defined passway did not lose any of her rights by nonuser for more than fifteen years of a portion thereof covered by a divisional wall, 79 C 457
acquired even if one mistaken in his ownership, 81 C 133
possession under parol gift of land for fifteen years creates title against donor, 81 C 540, 83 C 360
subsequent conveyance of a life estate to one who has possessed adversely does not necessarily render possession thereafter subservient to such instrument, 83 C 360
not obtained over railroad right of way, 86 C 275
——same result may be reached by abandonment, 86 C 275
right of eaves-drip upon adjoining property, 89 C 359
widow, before assignment of dower, may get title by, 90 C 133
applied to fire escapes and swinging blinds, 92 C 547

less actual use required to establish adverse possession of an island than a tillable farm, 95 C 619
when continuity of possession by cotenant is not broken by acts of other cotenant, 95 C 619
that State has an interest in the land does not prevent one cotenant gaining title against the others, 95 C 619
hidden sewer, lay of the land and use of the pipe not sufficient notice in adverse possession, 96 C 676
church society maintaining horse sheds on disputed land *held* to have acquired title by adverse possession, 103 C 332
specific devisee *held* not to have acquired title to land of which she took possession prior to testator's death after his statement, "You shall have it," 103 C 352
possession under subsisting contract for purchase of title is not adverse; repudiation and notice to owner necessary, 106 C 300
plaintiffs *held* not to have acquired title by adverse possession to twenty-five foot strip between parties' respective properties, 107 C 252
narrow strip of land between claimant's line and wall of shed on defendant's premises used to store materials in connection with driveway on claimant's premises, for gate posts, etc., 108 C 1
——effect of defendant's renting rear portion of claimant's lot and using strip in connection with it, 108 C 1
——what constitutes sufficient entry by owner to interrupt continuity of claimant's possession, 108 C 1
——mistaken belief of claimant that he had title or lack of claim of title will not defeat adverse possession, 108 C 5
effect of occasional use by real owner and overhang of eaves, 108 C 8
by virtue of fence, where no evidence that it was not division line, 109 C 451
where title to strip of land along parties' boundary has once become established by adverse possession, erection of fence excluding part of it will not destroy title, 109 C 698
mortgagor or his grantee does not hold adversely to mortgagee in absence of repudiation of mortgage, 114 C 88
——nor are latter's rights affected by transfer to third person, 114 C 88
on finding, defendant's contention in court below, that he had acquired title to disputed strip by adverse possession, properly abandoned on appeal, 121 C 350

§ 3. Evidence

evidence of, admissible under general issue in ejectment, 1 R 51
admissions of mortgagor in possession to rebut claim of, 3 C 288
unacknowledged deed is evidence of the character of the possession, 3 C 403
entry under parol gift prima facie evidence of, 13 C 235, 21 C 413
no presumption of grant to one claiming by, 14 C 291
evidence of, must apply to the locus in quo, 20 C 210
question of, to be determined by jury from all the facts, 27 C 74
not to be made out by inference; requires clear, positive proof, 29 C 398
evidence of omission by mistake of land in question from deed of adverse holder is admissible, 31 C 532
knowledge and acquiescence of owner presumed from ouster of what nature, 33 C 334
——same presumption in case of prescriptive rights claimed by adverse user, 33 C 334
case opened on terms after a default to try title in ejectment, 38 C 497
——defendant to prevail must show title, irrespective of title of plaintiff, 38 C 497
mere claims or assertions of title in absence of other party inadmissible in evidence, 44 C 123
——aliter, as to declarations forming part of res gestae, 44 C 123
possession and payment of taxes admissible to show claim of title, 57 C 531
——testimony of assessor admissible to identify land on which taxes were paid, 57 C 531
entry under warranty deed purporting to convey whole estate, raises presumption that grantee holds under deed as exclusive owner, 62 C 82
extending fence into tidewater as evidence of claim of title to land under water, 69 C 15
building wall as evidence of possession, 71 C 254
charge as to; color of title; proof of possession in connection with paper title, when necessary, 71 C 555
evidence of use of land given by former occupant of adjoining tract, 74 C 107
knowledge by owner of another's possession of his land is presumed, 74 C 107
mere possession not enough unless exclusive, 75 C 522, 78 C 128, 82 C 653
payments on mortgage debt, to rebut claim of adverse holding by mortgagor, 76 C 146
occupation of land as evidence, 77 C 28
acceptance of lease as rebutting, 79 C 493
payment of taxes as evidence of adverse claim, 80 C 338
possession of land under void deed is relevant to show that donee entered under claim of title and not in subordination to donor, 81 C 545

effect of terms of a deed, 81 C 546
exists from holding land given orally without denying title of donor, 82 C 437
acts of holder of real estate may warrant presumption of, 82 C 437
taking sand without consent of town does not show exclusive possession in some one other than town, 82 C 653
apparent adverse possession assumed in absence of knowledge of a deed that would affect it, 83 C 360
ownership established, prima facie, by chain of deeds, 84 C 570
obtained by ousting real owner and holding fifteen years, 84 C 570
all acts of ownership by plaintiff and prior owners admissible, 85 C 160
when declarations of deceased predecessor in title admissible, 85 C 160
chain of ancient deeds as proving possession, claim of right, etc., 88 C 521
erection of fence as evidence of possession and claim, 88 C 688
statement of lack of knowledge is no disclaimer of title, 92 C 546
whether facts found by trial court make out a case of adverse possession is a question of law, 95 C 619
cotenant gives deed of the whole property, grantee under it holds adversely to other cotenant, 95 C 619
quitclaim deed is of as much value as a warranty deed in giving notice of adverse holding, 95 C 619
acts of ownership if hostile, adverse, and under claim of title constitute adverse possession; otherwise may be consistent with holding in cotenancy, 95 C 619
erection of fence after proceedings begun and supervision of public dumping could not of themselves constitute adverse possession, 101 C 173
facts *held* to show no title by adverse possession, 101 C 406
must be clearly and positively proved, 101 C 406
testimony that wall was "treated as boundary line" for indefinite period, and that clothes poles were on land when purchased, not sufficient, 102 C 83
evidence *held* to show adverse possession over at least part of disputed land, 109 C 693
essential element is whether use was under claim of right; so evidence of witness whether he used land under claim of right, admissible, 118 C 137

AGENCY

§ 1. Creation and Existence of the Relation
2. ——In General
3. ——How Proved; Presumption of Agency; Reviewability
4. Authority of Agent
5. ——In General; Particular Cases
6. ——Implied and Apparent Authority
7. Ratification
8. Notice and Knowledge
9. Liability of Principal to Third Parties; Rights of Principal
10. ——In General
11. ——Crimes, Misrepresentation and Fraud of Agent
12. ——Admissions and Declarations of Agent
13. Liability of Agent to Third Parties
14. Mutual Rights and Duties
15. Actions; Evidence

Note: Cases dealing with the liability of the principal for the torts of the agent are listed under Master and Servant § 9, and Automobile § 30.

See also Attorney at Law; Banks and Banking; Broker; Corporations § 3; Embezzlement; Evidence §§ 14, 48; Independent Contractor; Insurance § 5; Joint Enterprise; Municipal Corporations § 12; Partnership

§ 1. Creation and Existence of the Relation

§ 2. ——In General

where one jointly interested in note appoints agent to collect, 1 C 350
master of vessel is owner's agent, 2 C 390
collecting bank is not the agent of bank forwarding bill or note, 12 C 313
revocation of a general authority affects third persons only after knowledge, 38 C 201

principal's duty to give notice of revocation to those previously dealing with his agent as such, 38 C 201
——steamboat steward; advertisement for proposals not a notice of revocation, 38 C 202
——company not liable for supplies furnished steward who had no general authority, 38 C 202
appointment of agent by all directors and stockholders is valid though meeting is informal, 56 C 96
auctioneer is agent of both parties in effecting a sale, 56 C 105
——his signature of memorandum of sale of realty is a sufficient signing by both parties within Statute of Frauds, 56 C 105
agent of vendor in charge of small portion of property not conveyed is not made agent of vendee by request of latter to perform certain work in his absence and an offer to pay for same, so as to bind vendee by his declarations, 62 C 123
stockbrokers executing customer's orders in purchase and sale of stocks on a margin *held* to be his agents, 63 C 198
agency by estoppel, 69 C 465, 76 C 508, 79 C 227
agency as question of law or fact, 71 C 441, 74 C 425, 489, 76 C 508, 82 C 448, 96 C 21
agency of one using candle to fill oil tank in building thereby destroyed by fire, 74 C 425
by permitting assignor to collect accounts assigned, 78 C 211
one who buys house to remove it not agent of vendor, 79 C 370
agent distinguished from servant, 79 C 720
act of one not act of several unless he is their agent, 83 C 120
agency to sell land may be given by parol, 83 C 121, 96 C 84
difference between agent and independent contractor, 86 C 292
bank is agent of owner of note when, 87 C 248, 91 C 674
officer serving writ of replevin is agent of plaintiff vendor under conditional bill of sale; possession of latter is thereby valid even though writ was defective, 87 C 369
daughter as such not agent of mother, 88 C 37
employee of corporation may be personal agent of its officers, 88 C 710
attorney who drafts deed may be agent of grantor and grantee, 89 C 36
distinguished from trustee; one who receives money to invest, 89 C 226
one copurchaser agent of the others, 90 C 183
pledgee naming employee of pledgor as his agent cannot claim possession against pledgor, 90 C 422
who is an independent contractor, 91 C 425
attorney drawing money is agent of client, not bank, 91 C 648
undisclosed agency not applicable if it works injury, 93 C 460
one whose employment was discretionary with another may be his agent, 94 C 435
town is agent of the State in highway matters, 95 C 242
notice to employee of agent to do nothing further is not revocation of agency, where notification not communicated to agent, 95 C 510
agency to sell real estate may be created by parol, 96 C 84
——and where general, with unlimited discretion, it need not be specific as to description of property or terms of sale, 96 C 84
attorney drawing contract of sale may be agent of both parties, 96 C 84
——delivery to such attorney is delivery to seller, 96 C 84
where defendant agreed to sell fifty shares of stock, found he could deliver only forty-five, and directed plaintiff to buy five in open market, plaintiff was defendant's agent as to purchase of five, 99 C 169
——transaction was in performance, not formation, of contract and so outside Statute of Frauds, 99 C 169
S bought automobile and then instructed T, the unpaid seller, to exhibit it to possible purchasers; T delegated duty to X; *held* that X was S's agent, but not T's, 100 C 193
——no joint enterprise or partnership between S and T, 100 C 193
——T's only duty was to use due care in selecting X, 100 C 193
broker who is merely employed to sell certain merchandise is not general agent, 101 C 265
distinction between servant, agent, and independent contractor, 102 C 76
method of compensation, or ownership of tools, not conclusive as to status, 102 C 76
owner of taxicab *held* servant of cab company under whose control he worked, 102 C 76
insurance broker is agent of person applying for insurance except as to collection of premium, 102 C 370
where judgment describes party as "agent" this determines status, though elsewhere in pleadings he is spoken of as individual, 103 C 491
doctrine of joint enterprise as related to agency, 103 C 583
——negligence not imputed in action between those so engaged, 103 C 583
——negligence is imputed in action by either against third party, 103 C 583
wife as agent of husband as regards tender of rent due from him, 104 C 120
relation usually, but not necessarily, based on contract; consideration not essential, 104 C 257
employee of garage undertaking without authority to deliver car to owner at latter's

request *held* agent of owner not of employer; owner liable to third party, 104 C 467

bond given by surety company to obligor to be delivered to obligee; obligor *held* agent of company, 104 C 551

property owner directed to repair sidewalk and send bill to city *held* to be employee of city as to his own labor and its agent as to help hired and material purchased, 105 C 545

distinction between employee and independent contractor, 107 C 143

contract for truck and driver at stated price per hour, with no power of selection as to driver, *held,* under circumstances, to be independent contract and not employment contract, 107 C 143

owner of truck took it to G for repairs and G took it to K for part of work; K's son injured plaintiffs while redelivering truck to G, without authority or permission; *held* he was not agent of any of these parties, 107 C 171

one may be agent of two contracting parties if both know and consent, 107 C 242

absence of mutual agency distinguishes joint adventure from partnership, 107 C 349

wife *held* under circumstances neither partner nor agent of her husband to sell his real estate, 107 C 612

relation of principal and agent necessarily preliminary to question of negligence, 109 C 465

agent writing insurance in companies he does not represent is acting as broker and agent of insured, 109 C 609

——in companies which he represents is agent of company, 109 C 609

one engaged in sale of lots under contract with representative of owner *held* to be latter's subagent so that it was bound to account to him for money due under contract, 110 C 452

in determining whether contract made in person's name is his own contract or his contract as agent, intent controls, especially if contract not under seal, 110 C 457

——in determining this, another contract connected by reference and subject matter may be considered, 110 C 458

contract *held* one of agency and not joint enterprise, 110 C 571

in collection of sight draft and delivery of stock bank is agent of seller not buyer, 111 C 709

clerk the agent of hotel keeper in directing guest to hotel garage, 111 C 726

no relation of agency where one contracts in own name for construction on another's property without his consent, 113 C 344

defendant purchased automobile to transport materials to job and while so doing also carried eggs to deliver for wife; *held* he was not acting as her agent, 114 C 71

sales of stock *held* not brokerage transactions creating agency but sales between vendor and vendee; failure to deliver not embezzlement, 114 C 456

paper sent to bank for collection; relation of principal and agent created; tests of whether trust continues after collection followed by insolvency, 115 C 1

broker accused of embezzlement *held* to have been agent of M who entrusted him with stock, not pledgee, 115 C 306

under World War Veterans Act, conservator not merely agent of government through whom funds are paid to ward, 115 C 326

——conservator is arm or agent of Probate Court, 115 C 327

where plaintiff purchased article from agent of partnership, extending credit to him alone as principal, former partner not estopped to show partnership terminated before transaction, 115 C 389

upon whole evidence *held* that G at time of accident was delivering sand on his own account and not as agent for C, 116 C 116

in taking out insurance on car, as provided by conditional sales contract, to protect buyer's interest, sales company was his agent; it was authorized to accept policy for him; he was bound by its knowledge of its terms, 116 C 246

treasurer of bank who made withdrawal as agent for depositor was bank's agent also, 116 C 335

——and his knowledge of bank's condition was depositor's knowledge, 116 C 335

when relation of bank with depositor of checks or drafts for collection is that of debtor and creditor as distinguished from bailor and bailee or principal and agent for collection, 117 C 407

bank receiving draft for collection; whether agency continues after collection, 118 C 490

ordinarily relationship having been created continues until completion of transaction upon which agent was employed, 118 C 493

——when individual is employed to collect money for another and remit, agency does not cease until money is remitted, 118 C 493

where depositor draws check on bank and deposits it in another bank, latter becomes agent for collection, 118 C 586

——and where latter forwards it to Reserve Bank for collection, Reserve Bank becomes subagent, 118 C 586

test of partnership is existence of relationship of principal and agent, 124 C 501

general rule that whatever a person may lawfully do if acting in own behalf he may lawfully delegate to agent, applicable to acts done under a statute, unless language or end to be accomplished demands personal execution, 126 C 541

——so inhabitant of town having right under special law to inspect books and papers of boards could appoint nonresident agent to do so, 126 C 536

mortgagee selling personal property under New York laws sells it as own, not as agent of mortgagor, 128 C 254

one of two joint borrowers receiving statement of small loan company becomes agent of other for purpose of receiving it, 128 C 254

§ 3. ——How Proved; Presumption of Agency; Reviewability

not implied from naked act, without exhibition or pretense of authority, 4 C 548

general agency, how proved, 5 C 74

declarations of alleged agent inadmissible to prove the fact of agency, 10 C 12, 62 C 123

proof of agency by giving credit, etc., 10 C 511

whether acts and conduct create an agency, a question of fact, 10 C 512, 21 C 597

wife sometimes presumed to be husband's agent; presumption is based on what, 15 C 357

character in which party acted, as principal or agent, may be shown by parol, 17 C 272

presumption of agency from control of owner's property, 21 C 597

shipper of horses presumed to be agent of one who, unknown to railroad company, accompanies them, 51 C 151

——as to representations to railroad company, 51 C 151

a course of dealing will often lay foundation for presumption of agency, 51 C 157

——an express consent in prior cases does not imply a consent to transaction in hand, 51 C 157

relationship of husband and wife as evidence of, 75 C 259

admission by principal that one was "probably" acting as his agent, 77 C 158

any facts may prove agency, though neither principal nor agent testifies, 77 C 578

not proved against principal by agent's declarations, 82 C 685

evidence necessary to constitute, to sell land, 85 C 384

special agency does not prove general one, 88 C 219

agency for one purpose does not establish agency for another, 88 C 219

statement of agent inadmissible to enlarge scope of authority or to show apparent authority, 89 C 353, 91 C 350

facts admissible to show whether one is agent or owner, 93 C 107

answer "yes" to statement by plaintiff that defendant's agent had come to see him *held* not admission that S, whose false representations were relied upon by plaintiff, was defendant's agent, 96 C 448

admission by principal as to agency at one time not admission of agency lasting over considerable period, 100 C 546

where plaintiff relies on acts of one purporting to represent defendant, questions are, did he purport to represent defendant and do acts for him, and was defendant so connected with his acts as to tend to prove actual agency, 101 C 590

——rule as to prima facie proof of agency before admitting statements of agent applies, so as to require evidence of second condition before that of first, 101 C 591

——second condition can be proved by circumstantial evidence, 101 C 592

——so statement of purported agent that defendant sent him are admissible, 101 C 593

conclusiveness of finding that agency existed, 103 C 491

when agency in other transactions admissible to prove agency in transaction in question, 104 C 302

agency cannot be established by declarations of claimed agent, 104 C 302, 107 C 621

where agency is found as a fact, not a conclusion, it can only be attacked by motion to correct, 104 C 372

as conclusion of fact; not reviewable on appeal, unless legally inconsistent with subordinate facts, 104 C 467

finding of agency or bailment is conclusion of fact to be tested by the subordinate facts, 105 C 429

finding of agency not reviewable where legally consistent with subordinate facts, 109 C 441

driver's report of automobile accident is not admissible to prove him agent of defendant, 111 C 407

——agency cannot be proved by statements of claimed agent, 111 C 407

statements by driver of automobile made in absence of defendant cannot prove his agency, 114 C 244

legal presumption raised by 1931 statute that wife driving husband's car is his agent, 117 C 97

agency cannot be proved by declaration of alleged agent, 117 C 653

——in its discretion court may receive evidence of declarations of agent of what he did and said subject to subsequent proof of authority of agent, 117 C 653

——but it was error to admit in proof of agency not only declarations of agent of what he did but his declaration that he had authority to do it, 117 C 653

evidence that person who made admission of agency to plaintiff was defendant *held* sufficient to justify jury in so believing though plaintiff did not know him before, 118 C 531

marital relation per se bestows no authority upon husband to act as agent for wife or enter into contract for her without her consent, 121 C 656

——credit having been given husband alone, relationship affords no ground for presumption that he was wife's agent, 121 C 656

——it is but one circumstance to be considered bearing upon this issue, 121 C 656

fact of a special agency does not tend to prove a general agency nor does existence of agency for one purpose tend to establish existence of one for another and different purpose, 121 C 656

where husband purchased fence to go around property he had deeded wife for love and affection, burden of proving he was wife's agent in making contract on seller though fence became accession to wife's estate, 121 C 656

——and court's conclusion that no such agency was proved warranted by facts, 121 C 656

basis of rule that agency cannot be proved by declarations of alleged agent is that whether or not agency exists is conclusion for court or jury, 128 C 683

——agent, however, not precluded from giving testimony otherwise admissible as to facts and circumstances which will assist trier in arriving at conclusion, 128 C 683

——testimony of lawyer who signed creditors' signatures to agreement of compromise as to his relations with these creditors properly admitted, 128 C 683

§ 4. Authority of Agent

§ 5. ——In General; Particular Cases

clerk sent to collect debt has no authority to receipt in full, for part only, 2 R 55

——principal not concluded by such receipt, 2 R 55

general authority gives power to agent to give principal's notes, and borrow money on them, 2 C 25

special agent cannot bind principal by unauthorized act, 3 C 183, 37 C 62

agent of party in whose behalf deposition is taken cannot draw up same, 5 C 324

wife cannot execute husband's intentions to make advancements without his authority, 6 C 311

del credere commission, defined, 6 C 443

agent having limited powers cannot exceed them, 14 C 130

authority of agent of corporation need not be proved by corporate vote, 14 C 187, 56 C 37

what powers are included in authority given agent, 15 C 356

one employed to purchase cannot buy for himself, whether actually or constructively agent, 16 C 400

minor son, agent of father to sell goods as a peddler, cannot sell out to father's creditor, when, 17 C 486

when authority is sufficiently broad to authorize execution of bond, 17 C 490

general language in a power, limited to subject matter, 17 C 490

public agents all to be notified before majority can act, 25 C 17

power to "negotiate for sale," no power to sell, 37 C 13

town not bound by unauthorized note of selectmen, 37 C 60

memorandum of sale signed and dated back by agent after refusal by principal to be bound by contract, is inoperative after termination of agency by payment for services, 40 C 455

messenger to deposit check at bank, has no power to draw money thereon, 41 C 425

——bank liable to principal unless he clothed agent with apparent authority, 41 C 426

one having acted as agent may file and foreclose lien as "A, agent," 42 C 100

no fixed legal power in "general business manager," 42 C 559

general authority to contract enables agent to agree on the terms, 44 C 224

special agent authorized to hire clerk at $11 per week is not thereby empowered to hire for six months, 49 C 579

——employer not liable for discharging clerk within the six months, 49 C 580

facts *held* insufficient to justify holder of mortgage as collateral in releasing same as agent of equitable owner, 51 C 157

note and mortgage legally taken by agent for principal not affected by agent's change of mind as to disposition of them, 51 C 219

to expend certain sum; contracts for more in labor and materials; if amount for materials is within the sum, contract *held* authorized, 52 C 540

——since materials ordinarily precede labor, 52 C 541

principal places certain sum in hands of agent for certain purpose; inference that agent could not purchase on credit, one of fact, 52 C 542

distinction between power conferred and instructions de exercise of it, 52 C 540

——limitation of amount to be expended, *held* instructions de exercise, 52 C 540

of agents of town is limited by the express language in which it is conferred, 55 C 414

persons dealing with towns through agents must at their peril take notice of the power of the agents, 55 C 414

——party contracting for part of work must inquire whether other contracts are within appropriation, 55 C 415

committee appointed to build school at a certain cost cannot bind town for larger sum, 55 C 414

a factor and financial agent of a manufacturing company has the authority habitually assumed and exercised by such an agent, 55 C 494

a company vote is not necessary to ratify acts of a general and unlimited financial agent, 56 C 37

——such agent has absolute control of all money and personal property of company, 56 C 37

——his power is not affected by mention of such property in a sealed instrument requiring a company vote, 56 C 38

application of personal property of company in payment of its debts by general financial agent is binding, 56 C 38

to institute "legal proceedings" is not authority for criminal prosecution, 56 C 500

agent commissioned to purchase cannot be himself the seller, 58 C 36

——principal may rescind on knowledge, or affirm and ratify, 58 C 37

appointment of subagent, 66 C 465, 78 C 333

one cannot represent both seller and buyer unless both assent, 68 C 254

if principal cannot give legal authority to agent under laws of his domicil, acts of agent thereunder in another State are invalid, 68 C 541

request to find purchaser of land gives no authority to sign contract of sale, 71 C 401

timekeeper or superintendent has no authority to employ surgeon, 75 C 72

to receive payments from possession of note and mortgage, 76 C 508

resolution, custom, or circumstances affecting authority known to principal, 77 C 565

distinction between authority and instructions relative to its execution, 77 C 568

in assignor to collect claims assigned, from failure of assignee to object, 78 C 211, 679, 79 C 208

in absence of custom, authority to sell does not give authority to exchange or barter, 80 C 23

no presumption that private agent is such or has authority, 81 C 639

sufficient evidence of authority to act for partners, 82 C 294

must have express or implied authority; question of fact, 82 C 448

dealing with known agent puts one on notice, 82 C 448

in newspaper office to make advertising contracts, 82 C 448

conductor of freight train has no authority to take passengers except as custom gives it, 82 C 574

name of corporation followed by officers' makes contract that of corporation, 85 C 215

president of corporation in charge of its business is agent to hire help, 85 C 513

daughter not necessarily agent of mother; authority may appear directly or be inferred, 88 C 37

son not agent of mother to manage property unless proved, 88 C 219

if A employs B to collect money and B turns it over to C, agreement between A and B admissible to show limits of B's authority, 89 C 205

one given money to invest has no authority to speculate, 89 C 226

authority to sell liquor does not give right to buy on credit, 89 C 353

not enlarged by agent's own acts without acquiescence by principal, 89 C 353

authority given to file mutual distribution not revoked by death, 89 C 431

wife as agent of her husband, 90 C 690

scope of authority question of fact, 91 C 482

burden to prove authority on one who asserts liability of principal, 92 C 412

town agent must be authorized expressly by vote or by statute, 92 C 412

individual selectman not agent to bind the board for acts outside its province, 94 C 435

authority ordinarily question of fact, but may be one of law, 96 C 21

authority of agent to sell real estate, 96 C 84

agent to sell real estate may not sign agreement of sale, 96 C 670

ignorance of purchaser dealing with broker who is merely employed to sell certain merchandise that he is dealing with such broker cannot enlarge latter's authority, 101 C 265

one dealing with public officer or agent in governmental matter bound to know limits of his authority, 102 C 206

guardian acting in fiduciary capacity and under mandate of Probate Court presumed to have authority to sign real-estate contract as agent for another guardian of children in same family, 105 C 218

authority to give in tax list does not include authority to put on values which law does not require, 106 C 423.

incorporators as agents of subscribers before corporate organization empowered to incur reasonable expenses, 107 C 216

conditional vendee with actual authority to resell may give absolute title to purchaser, 107 C 365

agency to drive car includes authority to make accident report which is admissible against owner, 107 C 670

workman instructed by foreman of repair work to return to building for his pay; *held* question of fact whether such invitation was within scope of authority, 108 C 226

incidental personal interest or benefit of agent in a given act does not remove it from scope of authority, 108 C 226

in general, insurance agent is without authority to accept anything but cash for premiums, 109 C 609

——but a balancing of accounts with insured *held* the equivalent of cash, 109 C 609
death of party revokes attorney's authority to take appeal from probate, 110 C 646
authority of one answering call on telephone of another and claiming to represent him, to speak for that other, 111 C 299
——statements admissible prima facie, 111 C 299
unauthorized statement of president de stock dividend *held* not a declaration by the corporation, 111 C 325
representation of president of corporation that outstanding stock was paid for, 111 C 497
one dealing with municipal agent bound to know limits of his authority, 111 C 515
——but where so much work is authorized as can be done within appropriation, and only town officers know charges made against it, contractor not bound to know when it is exceeded, 111 C 515
of attorney acting for both parties to accept deed for purchaser; effect of assumption agreement in deed, 112 C 307
where real issue in case was limitation of agent's authority to accept oral order, charge not making this clear *held* erroneous, 113 C 223
——question of agent as to limitations upon his authority admissible though limitation would not avail unless other party knew of it, 113 C 223
where defendant entrusted entire matter of purchase of property to her brother, he had authority to insert assumption clause, 114 C 200
salesman ordinarily has no authority to make contracts but acceptance by principal is necessary, 114 C 495
wife *held* to have authorized husband to contract for construction of garage on their common property, 115 C 292
termination of authority of agent of partnership by its dissolution, 115 C 389
where conditional vendor failed to give instructions to attorney to redeem car seized for illegal transportation of liquor *held* he abandoned it, though attorney redeemed in vendor's name on behalf of another, 118 C 220
——and vendor forfeited his right to reclaim, 118 C 220
testimony as to statements of F tending to contradict plaintiff's claim that F authorized agent to purchase roofing material admissible under statute as declarations of deceased person relevant to matter in issue, 119 C 549
——and upon whole evidence finding that F did not authorize agent to order the roofing justified, 119 C 549
——failure of plaintiff to take action for period of six years until after deaths of F and agent was circumstance court could take account of; weight for court to determine, 119 C 549
whether agent of water board had specific authority to make agreement altering terms of contract made by board was question of fact, 121 C 163
of insurance commissioner to accept service for foreign insurance company, 121 C 309
granted by chattel mortgage to mortgagor to sell with approval of mortgagee, 122 C 106
A's wife constituted husband agent for purpose of filing tax lists on real estate they owned together, 123 C 543
——she cannot avoid responsibility because of his listing property as belonging to himself individually, when it belonged to them both, 123 C 543
creation of agency carries with it usual and appropriate means of accomplishing its object, 124 C 108
——agent not authorized to do acts not incidental to transaction, 124 C 108
authority of agent to trade in car purchased for him by employer, 124 C 693
either precedent special authority or subsequent ratification is essential to make compromise or settlement by attorney binding, 128 C 224
——so offer of assistant corporation counsel to reduce defendant's assessment was not a legal offer without precedent authority from or subsequent ratification by city, where there was no authority in charter, 128 C 224
——his authority could not be proved by his own declarations as agent, 128 C 224
——parties charged with notice of extent of his authority, he being agent of municipality, 128 C 228
agent of corporate depositor *held* to have authority to draw funds from bank, and waiver of by-law requiring presentation of deposit book was an incident, 128 C 511
tax collectors are elected officers and cannot authorize agent to take over matters involving exercise of discretionary powers, 128 C 552
——statutory power given state banks to act as agents for tax collectors contains necessary implication that their authority applies only to ministerial acts, 128 C 552
——such bank has power as agent to sign and file certificates continuing tax liens, a ministerial act, 128 C 552
——in absence of evidence that a discretion whether or not to file the liens was reposed in the bank, § 45 of Practice Book controlling, 128 C 552

§ 6. ——Implied and Apparent Authority

an implied authority is limited by the usual course of dealing, 11 C 47

not empowered to sell on credit, if contrary to course of dealing, 11 C 48
what discretionary powers implied by law; tort, 24 C 51
court should never extend powers by implication except to carry out intention or prevent third parties being misled, 41 C 168
apparent authority to deal with goods from possession, 72 C 504, 517
all power necessary and proper to accomplish purpose implied, 78 C 333, 80 C 23
may appear from principal's course of action, 82 C 286
may appear from knowledge of corporation's directors, 82 C 286
express or implied authority question of fact, 82 C 448
principal liable when agent is held out as such and public believes it, 89 C 353
factor making unauthorized sale confers no title on innocent purchaser for value, unless principal ratifies sale or has clothed factor with appearance of ownership, 90 C 487
commission salesman has no apparent authority to accept payment, 91 C 351
agent of municipal corporation has no implied authority, 92 C 412
outside salesman has implied authority to contract for future deliveries, 92 C 636
agent has implied authority necessary to accomplish object of agency, 92 C 638
employee's authority to operate motor vehicle for employer may exist if it is fairly implied from nature of employment, 96 C 21
law presumes employer intends employee to have powers necessary to carry on work, 96 C 21
authority may be inferred from facts and circumstances against denial by both principal and agent, 96 C 27, 450
agent of owner to ship goods by carrier has no actual or apparent authority to take them at point of destination, 97 C 7
when acts and conduct of agent are within apparent scope of authority, 99 C 153
agent of drawer bank not authorized to cash checks payable to order of another, either by course of dealing or ratification or estoppel, 99 C 501
evidence examined and *held* not to show real or apparent authority in corporate employer to purchase body for truck, 100 C 314
express authority includes necessary and proper incidental powers, 100 C 441
——authority to lease a theatre included power to hire real-estate agents, 100 C 441
——and principal liable for realtor's commission, 100 C 441
general agent has authority ostensibly coextensive with business, 101 C 626
——not limited by uncommunicated limitations, 101 C 626
member of association cannot claim it has given agent ostensible authority to do act forbidden by its by-laws, simply because agent does it, 101 C 651
bond given by surety company to obligor to be delivered to obligee; limits of obligor's authority, 104 C 551
existence of implied authority is question of fact; jury's conclusion final, 106 C 396
presumed principal intends agent to have powers reasonably necessary to work entrusted to him and such others as are reasonably necessary to make those powers effective, 107 C 393
——jury might reasonably hold dinner given by manager of branch of defendant to employees was principally in defendant's interest rather than personal matter, 107 C 393
——and within manager's apparent or implied authority, 107 C 393
——if this is so, that not expressly authorized, nil sig., 107 C 393
——implied powers are particularly broad in the case of general agent or manager, 107 C 397
existence of ostensible authority, and its exercise by silent acquiescence in delivery of note by third person to representative of maker are questions of fact, 107 C 574
general agent has authority co-extensive in scope with business entrusted to him, with power to do all that is usual and customary, 110 C 457
——one dealing with him as subagent is justified in assuming that he is doing what owner could have done, 110 C 457
where agent was held out for two years as having authority to negotiate checks principal is estopped to deny authority, 110 C 635
——especially as principal had benefit of proceeds, 110 C 635
operator of car has implied authority from owner to make report of automobile accident, 112 C 421
implied representation of authority from act in giving written guaranty in connection with order for goods, 112 C 508
——fraud will not be based on this ground where order blank contained express limitations of authority, 112 C 508
letter by clerk of police board to city officials that board had retired officer admissible as communication within scope of implied powers of clerk, 119 C 155
finding that company taking out group insurance had general or implied authority to make change of beneficiary was reasonable; was question of fact, 120 C 644
while making of agreement with teller to collect checks for person from his debtor and hold them for him not ordinarily within

scope of teller's authority, consistent course of conduct continued over long period sufficient to bind bank, 121 C 205
——question one of fact for jury, 121 C 205
employment of agent to sell does not authorize him later to collect sales price, 124 C 105
——especially when note given for balance of purchase price payable to principal, 124 C 105
——authority in selling agent to take such a note does not give him implied power to accept payment of it, 124 C 105
——particularly after agent has delivered note to principal, 124 C 105
——so where agent for isolated transaction of selling particular car for dealer accepted from buyer cash and note payable to dealer secured by conditional bill of sale which he turned over to dealer, no authority in agent to accept payment of note, 124 C 105
apparent authority; principal must have held agent out to public as possessing requisite authority and the one dealing with agent and knowing facts must have believed on reasonable grounds that agent had necessary authority, 124 C 105
——upon facts *held* that buyer of car could not reasonably have believed that agent had authority to accept payment of note without coincident surrender of it, 124 C 105
authority to sell includes only authority to sell for money payable at time of transfer of title, 124 C 108
——rule applies where principal has entrusted agent with possession of article which he is to sell and deliver, 124 C 108
——rule where price is to be paid in instalments, 124 C 109
watchman of country club who negligently injured automobile of patron in getting it for him, at his request and for a tip, from place where it was parked, was not acting in scope of his implied or apparent authority from country club, but was agent of patron, 127 C 493
apparent authority depends on act of principal in holding out agent as possessed of it, viewed from standpoint of what person dealing with him would reasonably believe, 127 C 497
implied or incidental authority ordinarily a question of fact, 127 C 498
attorney has no implied powers by virtue of his general retainer to compromise and settle client's cause, except in certain conditions of emergency, 128 C 223
attorney employed to conduct suit has no implied authority to make statements not involved in conduct of litigation, 129 C 399
——but where claim is given attorney for collection, he is impliedly authorized to state to debtor what claim is, 129 C 399
——statements made by plaintiff's attorney in letter to defendant outlining claim were prima facie within scope of employment and admissible against client, 129 C 399

§ 7. Ratification

acts of agent as established and ratified by promissory note, 1 C 352
agent's acts cannot be confirmed in part and repudiated in part, 6 C 100
partial acceptance of unauthorized benefit is not a ratification, 10 C 279
full knowledge of all the facts indispensable to a presumption of, 16 C 97
has same effect as an original authority, 21 C 635
receipt of money and payment of interest is ratification of borrowing, 21 C 635
liability incurred by ratifying agents' tortious acts, 33 C 389
acts originally beyond agent's authority, may become binding on principal by, 43 C 435
doctrine of subsequent acquiescence and ratification is limited, 51 C 157
——alleged principal must receive benefit from act, or alleged agent prejudice from failure to dissent, 51 C 158
release by principal of mortgage taken by agent on false statement that debt had been paid, 51 C 217
——such action *held* an acceptance of mortgage and recognition of its validity, 51 C 218
where principal had knowledge of work and makes no objection, *held* to assent, 52 C 542
of unauthorized acts of agents of towns must be in lawful manner, 55 C 418
——as a rule directly and not by implication, and with full knowledge of all material facts, 55 C 418.
occupation of building after notice that builder claimed more than appropriation, *held*, on facts, not to render town liable beyond appropriation, 55 C 417
company need not ratify acts of a general and unlimited financial agent, 56 C 37
sale by agent sued on by principal, is thereby affirmed by latter, 57 C 47
——not merely as to price but also as to mode of payment, 57 C 47
——authorities on that point reviewed, 57 C 47
insurance company may ratify act of agent in submitting claim to arbitration after knowledge of award, 57 C 111
unauthorized sale by agent; continuance of a suit for price by principal after knowledge, 59 C 593
——where knowledge came from deposition of agent, after suit was brought, 59 C 594
——principal entitled to recover balance of price under the contract, 59 C 595

a municipal corporation may by ratification or estoppel be liable on contract of unauthorized agent, 60 C 517
in general, 65 C 75, 72 C 52
ratification of fraudulent act makes principal liable, 65 C 75
facts must be known and intention be present, 70 C 18, 74 C 689, 75 C 98
acquiescence in suit brought for infant by next friend as ratification, 70 C 646
must be by one for whom act is done; officer of society cannot ratify act done for its benefit, 72 C 52
approval of agent's acts with knowledge constitutes, 72 C 586
ineffectual transfer of note by wife during husband's life may be ratified by her after his death, 81 C 415
one not liable for extra work ordered by engineer unless he ratifies it, 82 C 485
acts of fraternal association ratified, 83 C 241
ratification unnecessary if agent is authorized, 85 C 384
corporation's knowledge of agent's acts *held* ratification, 85 C 504
acts before incorporation may be ratified and made binding thereafter, 88 C 233
if A gives B a claim to collect, and B turns it over to C, A's acceptance of the money no ratification of contract between B and C, 89 C 210
one's partner's acts may be made acts of partnership by ratification, 90 C 475
no title where unauthorized sale of goods unless principal ratifies, 90 C 487
if daughter signs application for gas and father pays, her authority ratified, 91 C 493
use of property ratifies assumed authority to purchase it, 91 C 493
is effective except as to intervening rights of third parties, 91 C 652
employer is entitled to be allowed to ratify settlement between employee and third party, 92 C 398
exists if insurance company acts on oral notice of loss given to unauthorized agent, 94 C 118
corporation's ratification of director's act in discounting customer's notes, 94 C 384
by master, of servant's torts, 94 C 707
ratification by plaintiff of A's act in ordering a carriage of B does not relieve A from liability for negligence, 95 C 639
wrongful action at a meeting not legally called may be ratified at legal meeting so as to make organization liable, but not so as to make action lawful, 96 C 60
conclusion as to ratification is one of fact, 97 C 31
——where deed is taken from possession of grantor before it was delivered and recorded by grantee, 97 C 31
retention and use of money implies ratification, 97 C 389
duty of principal to elect whether to ratify or repudiate within reasonable time where agent exceeds or disobeys instructions, 97 C 584
corporation is bound by usual rules of estoppel and ratification, 97 C 584
corporation renewing notes containing written agreement as to collateral ratifies agreement, 97 C 584
——so, by retaining proceeds of loan with knowledge of terms, 97 C 584
agent of drawer bank not authorized to cash checks payable to order of another, either by course of dealing or ratification or estoppel, 99 C 506
unauthorized act of agent intrusted with check in drawing cash not ratified by failure of principal to discover facts from bank statements and vouchers, 99 C 506
husband *held* to have ratified wife's act in employing attorney for him, 99 C 644
evidence examined and *held* not to show real or apparent authority in corporate employee to purchase body for truck, 100 C 314
——but corporation, having accepted it, is liable for reasonable value, 100 C 314
conduct without knowledge of essential fact does not work ratification, 102 C 186
ultra vires contract with municipal corporation cannot be made valid by ratification, 102 C 206
bringing action on lease is ratification of its execution by one purporting to be plaintiff's agent, 102 C 475
——quaere as to lack of mutuality where ratification is withdrawn before other party acts on it, 102 C 479
where husband placed wife's property in hands of broker for sale on certain terms and wife later told broker she wanted to sell, terms given by husband are ratified, 102 C 557
employment of detective by city attorney without authority not ratified by acceptance of services and approval of charges by city officials, 104 C 3
father, who ratified purchase of fur coat by daughter, liable upon his oral promise to pay for it, 107 C 51
ratification only applies to act done on behalf or for benefit of principal, 107 C 562
——ratification defined, 107 C 567
inadequacy of charge on ratification immaterial where that issue is not in the case, 107 C 562
where wife signed agreement to sell land as "authorized agent" of husband but told buyer she was not and that agreement was not to be effective unless he approved, it is not effective in absence of approval, 107 C 612
——no estoppel to deny agency, 107 C 612
——buyer not entitled to rely solely on her statement of her agency, 107 C 612

where agent made tentative agreement, he is conclusivelly presumed to have reported it correctly to principal, 108 C 130
——other party, on receiving latter's approval, may rest on agreement as made by agent, though he failed to report it correctly, 108 C 130
where attorney has accepted service, filed pleadings and prepared action under mistake as to employment by insurance company and insured later employs him these acts are ratified, 108 C 659
——but she did not ratify receipt of papers when he received them so as to come within term of policy requiring that they be immediately forwarded, 108 C 659
facts *held* to show knowledge by appellant of purchase of piano for it and such acceptance as to constitute ratification of agent's act in buying it, 111 C 412
lack of prior agreement, consent or authority may be obviated by subsequent ratification, 113 C 344
ratification can only apply to act done by one purporting to act as agent, 113 C 344
——hence where mortgage company, foreclosing without knowledge of one to whom it had sold mortgage, contracted for work in its own name, fact that buyer of mortgage took possession *held* no ratification, 113 C 344
——the two matters were entirely distinct and one may be ratified and not the other, 113 C 344
——taking possession of property did not ratify contract for work because it could not be done without owner availing himself of work, 113 C 344
waiver of defects in deed and lack of authority of agent to deliver, ratifies delivery and agreement in pursuance of which it was made, 114 C 116
——plaintiff could not thereafter claim damages on basis that deed was void, 114 C 116
ratification relates back to the time of original action, 114 C 124
forgerous indorsement by wife of husband's certificate of stock *held* not authorized or ratified by him, 114 C 172
where defendant intrusted entire matter of purchase of premises to her brother and was therefore chargeable with notice of assumption of mortgages in her deed, her dealing thereafter with the premises *held* to constitute a ratification of that assumption, 114 C 200
when agent has made contract in excess of authority principal must affirm or repudiate it in its entirety, 117 C 58
when purpose of voluntary association is not business or profit, liability of members for its contracts is not in nature of partners but of principal and agent, and only members who authorize or ratify obligation are liable, 119 C 681
——person may authorize obligation by becoming or remaining member, knowing that such contract would be proper or if it is outside scope of purposes, by assenting to it or participating in undertaking, 119 C 681
does not arise where principal acts in ignorance of material facts, 121 C 609
agent's assumption to be acting on behalf of principal in making contract, essential to subsequent ratification, 121 C 661
acceptance of results of act with intent to ratify and with full knowledge of all material circumstances is ratification, 121 C 656
——facts consistent with gift of fence by husband to wife acquiesced in by her with no knowledge which could charge her with liability for purchase price, 121 C 661
suit brought by plaintiff for specific performance of lease constituted complete ratifica- of agent's authority to make it; proof of actual authority unnecessary, 126 C 311
where attorney made offer of settlement without authority, sending of check by principal in different amount is not a ratification, 128 C 73
either precedent authority or subsequent ratification by client essential to make attorney's settlement or compromise binding, 128 C 224
whether or not absentee voters requested Democratic chairman to fill out blanks in instructions before forwarding them, nil sig.; signing and swearing to them would ratify his act and have all effect of prior authority, 129 C 491

§ 8. Notice and Knowledge

evidence proper to prove knowledge by principal of agent's acts, 18 C 462
notice to agent is notice to principal when, 25 C 449
note by town treasurer, who was also cashier of bank, to the bank to cover his embezzlement, 36 C 100
——bank cannot recover on note, cashier's knowledge being that of bank, 36 C 101
notice of general agent is notice to principal, 36 C 402
knowledge of agent acting intra viribus is knowledge of principal, 37 C 538, 38 C 218, 56 C 44
knowledge of agent of invalidity of contract is knowledge of principal, 56 C 44
——immaterial that authority of agent did not extend to final act of sale, 56 C 44
——suit to recover price of liquors sold for illegal purpose, 56 C 41
where husband acts as agent of wife in making fraudulent conveyance to her, 65 C 74
presumption that agent has communicated matters to principal, 66 C 238

imputation of knowledge of agent to principal may be removed by agreement, 66 C 241
acts of an alleged agent not admissible against principal unless knowledge of relationship or of acts on part of latter appears, 73 C 696
knowledge of street inspector imputed to city, 74 C 576
knowledge of president of two companies of claim against one of them supposedly communicated to other officers before contract made between them, 76 C 476
notice to agent outside of authority will not affect principal; that it was within his authority must appear, 77 C 449
casual knowledge of agent of dissolution of partnership not sufficient to bind principal with notice, 77 C 456
notice to general agent for adjustment of loss under insurance policy binds company, 79 C 394
imputing knowledge where agent is acting in fraud of principal, 80 C 102
when knowledge of agent is knowledge of principal, 83 C 581, 86 C 302
knowledge of defendant's bookkeeper that a physician treated A is knowledge of the defendant, 85 C 504
knowledge of employee of street lighting company, whose duty it was to care for lamps, of custom of policemen to shake unlighted lamps to make them light is notice to company, 88 C 670
notice to agent within his authority is notice to principal, 88 C 670
knowledge of assistant manager and bookkeeper as to fraud imputable when; question of fact, 91 C 482
knowledge of agent as to facts involved in fraudulent representation as knowledge of principal, 96 C 461
notice is not imputed to principal when agent acts or makes declarations, not in execution of duty owed principal, but to serve his own ends or defraud his principal, 97 C 1
corporation bound with knowledge of contents of document its agents execute, 97 C 588
where officers of national union entrusted officers of local to take action resulting in breach of third party's contract, latter's knowledge imputed to former, 98 C 2
where broker employs subagent to negotiate purchase of land from his own relative, and subagent, having secured contract, later surrenders it to be changed in interest of relative, principal not bound with knowledge of contract, 100 C 39
——when presumption of communication by agent to principal does not apply, 100 C 43
knowledge of agent while acting adversely to principal's interest not to be imputed to the principal, 100 C 42
knowledge of agent is knowledge of principal if acquired when acting within scope of authority, 100 C 442
knowledge by broker of purpose for which article is purchased not imputed to principal to give rise to implied warranty, 101 C 265
principal bound with notice of contracts made by agent within real or ostensible authority, 101 C 626
untruthful replies of freight agent to notice of stoppage in transitu *held* to show his knowledge of shipper's purpose and carrier's liability, 104 C 342
knowledge of officer of society acquired within scope of authority, imputed to society, 104 C 539
conclusive presumption that agent's knowledge in course of authority is principal's knowledge, 106 C 127
statements made by a reporter that he had informed superior officer of warning given him inadmissible, 106 C 128
——but admission is harmless as law would presume warning given him was communicated, 106 C 132
conclusive presumption that agent made full and accurate disclosure to principal of details of contract with third party, 108 C 126
where corporation has means of knowledge, its agent must be treated as affirming that he knows whereof he speaks, 108 C 511
knowledge of agent gained while acting as such in course of agency imputed to principal, 109 C 673
——presumption does not hold where agent acts in own interest adversely to principal unless principal ratifies act, 109 C 673
principal not bound where agent commits fraud unless he thereafter has notice and seeks to accept fruits, 109 C 673
principal bound with knowledge of agent gained in very course of transaction which knowledge affected, 110 C 319
——knowledge of agent of surety company as to nature of bonds required to cover duties of tax collector, 110 C 319
principal charged with notice of agent's assumption of authority over long period, 110 C 635
where defendant entrusted purchase of premises entirely to her brother and deed contained assumption of mortgage, she was chargeable with notice of that assumption, 114 C 200
——that brother received a commission from seller with her knowledge did not permit claim that he was acting in hostility to her interests, 114 C 204
where conditional vendor was authorized to take out insurance on property to protect itself, its assignee and purchaser, it was agent of buyer and he was bound with its knowledge of terms of policy, 116 C 246

treasurer of bank who made withdrawal as agent for depositor was bank's agent also, 116 C 335
——and his knowledge of bank's condition was depositor's knowledge, 116 C 335
nature of presumption that agent will communicate to principal knowledge coming to him in the performance of his duty, 118 C 538
——is conclusive unless fraud is clearly indicated or agent's conduct is such as to raise clear presumption that he will not communicate such knowledge, as where he is acting in his own interest, 118 C 538
revocation of authority of agent, even where principal may revoke it at will, ineffective as to agent without notice to him, 120 C 67
employer who has group insurance, not agent of company as regards obligation to give notice of termination of employment to employee, 120 C 68
——neither was employer as regards knowledge of such termination agent of employee so that notice would be imputed to him, 120 C 68
knowledge of grantee's agent that title was defective was grantee's knowledge, 120 C 75
though agent of water board had no specific authority to make agreement altering terms of contract between plaintiff and board, if latter knew or was chargeable with knowledge that plaintiff only continued work under contract relying thereon, it would be bound by agreement, 121 C 163
——under rule that matters coming to knowledge of agent acting within authority are conclusively presumed to be reported to principal, board was chargeable with knowledge, 121 C 163
——question of actual knowledge not important, 121 C 163
powers and authority of agent were such that information communicated to him re transfer of public liability policy to plaintiff became knowledge of principal insurer so as to make it liable on policy, 122 C 198
unnecessary to charge as to necessity of notice to landlord of dangerous condition since that condition was created by own agent, 122 C 362
knowledge of operator of elevator that key was left where tenant could use it was knowledge of landlord and tenant properly permitted to testify that operator told him of key, 122 C 363
mortgage loan company not agent of purchaser of mortgage so as to charge latter with its knowledge that note was spurious, 126 C 114
knowledge real estate company had of second mortgage to be given came to it in course of performance of its agency for Home Owners' Loan Corporation in securing first mortgage; that knowledge to be imputed to latter, 126 C 137
railroad charged with knowledge of facts which operators of train should have discovered in exercise of reasonable care, 127 C 325
knowledge of agent will not ordinarily be imputed to principal where agent is acting adversely to latter's interest, 128 C 513
——where same person acting as agent for two principals, if either party knowingly receives and retains benefits from transaction tainted with agent's fraud, he cannot disavow knowledge of fraud, 128 C 513
——otherwise if party receives no benefit from transaction, 128 C 514
——application of principle to fraudulent withdrawals of funds from bank by one who is officer of depositor and of bank, 128 C 513
inexcusable negligence of attorney does not take him out of rule imputing knowledge of agent to principal, 129 C 43
what directors know regarding matters affecting corporation's interests, corporation knows; knowledge of directors may be inferred from circumstances, 129 C 471

§ 9. Liability of Principal to Third Parties; Rights of Principal

§ 10. ——In General

principal not concluded by receipt in full given by mere collecting clerk who had obtained part only of the debt, 2 R 55
liable on note authorized by him to be given in his own name, 2 R 496
——such authority may be shown by parol, 2 R 496
no evidence can be given of principal's liability until fact of agency is shown, 1 C 259
for agent's loss when acting properly; principal is liable in assumpsit, 1 C 522
qui facit per alium facit per se, applicable alike to civil and criminal cases, 3 C 8; 54 C 93
no particular form of words necessary to bind principal by deed of agent, 6 C 469
——agent must express in deed the capacity in which he acts, 6 C 469
form of words in signing as agent, immaterial, 8 C 206
——execution by authorized agent on behalf of principal must appear, 8 C 206
one electing to credit a known agent cannot hold principal, 14 C 508
not liable for act of special agent, ultra vires, though one dealing with agent was ignorant of his limited authority, 16 C 455
transfer of stock to "E. H., cashier," vests title in bank, when, 17 C 269

society bound by note signed by agents as "vestrymen," etc., 21 C 633
greater precision required in executing sealed instruments by agent, 21 C 634
——when acting for corporation, than for voluntary association, 21 C 634
agent may so act as to bind no one, 22 C 384
possession of servant or agent is possession of principal; real estate, 23 C 514
agent may bind principal by contract under seal, without sealed authority, when, 29 C 575
signing of town orders by all the committee who accepted office, sufficient, 33 C 371
town not bound by unauthorized note of selectman, 37 C 60
steamboat company; liability for purchases by steward, 38 C 201
bank paying agent on check sent for deposit merely, is liable to principal, 41 C 426
——unless agent had apparent authority, 41 C 426
——bank liable for payment to unauthorized agent, 41 C 427
——especially where indorsement should have aroused inquiry, 41 C 427
either principal or agent may at law sue in his own name on contract by agent, as such, without disclosing his principal, 47 C 389
——in equity the real party in interest must, as a rule, sue, 47 C 389
not liable for variations from written contract ordered by supervising architect, 48 C 104
vendor may elect to make principal his debtor if agency was unknown at sale, 48 C 317
——though informed that buyer is an agent, if principal is unknown, 48 C 318
——not bound to inquire of agent the name of principal, 48 C 319, 320
——taking agent's note under these circumstances, no bar to suit against principal, 48 C 319
no personal acceptance by principal of mortgage taken by agent in principal's name is necessary, 51 C 219
party dealing with agent, and giving exclusive credit to him, cannot hold principal, 62 C 426
where one dealing with an agent has taken pay from the agent the principal is discharged whether disclosed or not, 62 C 426
may sue on contract made by agent, though undisclosed, but is subject to all equities good against agent; only proper plaintiff, where disclosed, 70 C 733
payment to agent is payment to principal, 73 C 567
act of agent within his authority is act of principal, 74 C 608
unauthorized agents or representatives can of themselves alone no more bind equitably than they can legally, 75 C 97
failure of agent to report to committee employing him terms of contract made will not relieve them of liability, 77 C 564
where agent in making contract exceeds price authorized, principal is liable for reasonable price, 77 C 568
liability by estoppel limited where agent is known to be acting under special authority, 79 C 227
principal liable jointly with agent for conversion at his direction, 79 C 577
liable where agent cuts trees below size directed to be cut, unless it appears that cutting those authorized did not necessitate cutting the smaller ones, 79 C 708
one knowingly accepting money from agent outside his authority is liable to principal, 89 C 226
liable when agent is held out as such and public believes it, 89 C 353
if principal receives money from alleged agent, agency of no importance, 91 C 371
secret owner liable on guaranty of contract as undisclosed principal or guarantor, 92 C 278
principal of undisclosed agent may ordinarily claim benefit of contract, 93 C 460
——but not if this would work injury to third party, 93 C 461
——principal by words and acts, may estop himself from taking advantage of the rule, 93 C 460
distinction between cases where one acts as agent not disclosing principal and where one does not disclose existence of agency, 93 C 467
principal is entitled to benefit of contract made in his name by authorized agent, 97 C 5
——goods delivered by agent of owner to carrier, in pursuance of former's fraudulent scheme and in compliance with fictitious orders presented by him, 97 C 5
where agent of fire insurance company was informed by owner that building insured did not stand on owner's land, company is bound, 97 C 336
where agent of vendee of real estate drew agreement of sale and read it to parties, vendor cannot be heard to say he did not know terms, 97 C 352
where unauthorized agent ordered body for automobile and defendant knowing plaintiff looked to it for pay, sold car for profit, defendant liable in quasi contract, 100 C 314
undisclosed principal liable on contract made for his benefit, 100 C 442
debtor making payment to supposed agent of creditor not protected by reasonableness of his belief, 104 C 302
effect of clause in written contract that principal not bound by any representation not contained in the writing, 105 C 572

conclusive presumption that agent correctly reported tentative agreement to principal, 108 C 127
——hence other party, on receiving latter's approval is entitled to rest on terms made by agent, despite claim that he failed to report them correctly, 108 C 127
seller tendered defective deed to buyer's agent and insisted upon leaving it, though agent refused to accept; retention by agent as enforced custodian of seller *held* not retention of buyer, 108 C 465
letter from insured to insurance company de unearned premium credited by agent, *held* not novation releasing company, 109 C 609
credit memorandum given by agent to insured of amount of unearned premium on cancelled policy is statement of amount owed by company not agent, 109 C 609
principal ordinarily not bound by knowledge of agent acting in hostility to it, 109 C 673
——but will be bound by his fraudulent concealment if it seeks to take advantage of acts done by him, 109 C 673
——concealment of material facts by agent of insured cannot be avoided where insured seeks recovery on policy, 109 C 673
contract signed by agent in own name, engaging plaintiff to sell lots owned by principal *held* binding on latter, 110 C 452
corporation or its receiver cannot appropriate benefits of contract made by officer and repudiate obligations entered into by him therein, 117 C 58
——when agent has made contract in excess of authority principal must affirm or repudiate it in its entirety, 117 C 58
when purpose of voluntary association is not business or profit, liability of members for its contracts is not in nature of partners but of principal and agent, and only members who authorize or ratify obligation are liable, 119 C 681
——person may authorize obligation by becoming or remaining member knowing that such contract would be proper, or if it is outside scope of purposes, by assenting to it or participating in undertaking, 119 C 681

§ 11. ——Crimes, Misrepresentation and Fraud of Agent

nonresident procuring a crime here, criminally liable for agent's acts, 3 C 8
not liable criminally for unauthorized act of servant or agent, 6 C 13
——subsequent assent does not render master liable criminally, 6 C 13
sale to general agent; payment; fraud of agent; principal liable for price, 36 C 401
delivery by an authorized agent is delivery by principal, 54 C 93
——rule applies to criminal and civil law, 54 C 93
——and where agent delivered liquor in no license town, *held* a violation of statute by principal, 54 C 93
liability for criminal act of agent, 69 C 89, 73 C 18
liability of principal for fraudulent representations of agent, 71 C 64, 82 C 638
cannot be held criminally responsible for agent's acts, done under general authority, unless it covers specific offense, 73 C 19
no liability where agent makes fraudulent representations when acting for himself to the knowledge of party to whom made, 75 C 436
fraud of agent as to bond and effect of public interest, 78 C 392
principal cannot retain money accepted by agent with knowledge that it was fraudulently obtained; nor where agent, to conceal defalcation, steals money and deposits it with funds of principal, 80 C 103
a public officer is liable for illegal acts of one whose employment was discretionary with him, 94 C 435
carrier liable to owner of goods for delivering them to latter's agent on his fraudulent representation that he is the consignee, 97 C 1
liability for fraudulent representations of agent, 105 C 572
corporation not liable for agent's misrepresentation that it would repurchase stock, unless authorized or ratified, 106 C 41
insured, who entrusts making of claim under fire insurance policy to agent is bound by his fraud though it is unknown to him, 109 C 686
liability of bank for balance due depositor where there have been fraudulent withdrawals by assistant treasurer of bank who was also officer of depositor, 128 C 510

§ 12. ——Admissions and Declarations of Agent

of agent in course of agency is evidence against principal, 2 R 30, 150
declarations and acts of agent when admissible against principal, 13 C 71, 18 C 491
what agent has admitted or related to third persons, inadmissible against principal, 13 C 71
of agent, inadmissible against principal, unless part of res gestae, 13 C 178
declarations of agent accompanying legitimate acts, admissible against principal, 18 C 491
declaration of agent that company received note as a "premium note," admissible, 22 C 148
declarations of draw tender as to mode of passing through preferred by company, admissible, 30 C 391
to rebut evidence of occupation by agent, defendant may show conversations between

agent and the one actually employing agent, 40 C 368
——though plaintiff was not present at the time, 40 C 368
declarations of agent when admissible before agency is proved, 46 C 463
declarations of defendant's agent that a forfeiture for exceeding time limit on a building contract would not be exacted, admissible to show waiver, 59 C 563
——but only for the particular instance, 59 C 563
declarations of agents *held* inadmissible, the agency not being sufficiently established, 62 C 123
declarations of skilled workman appointed by defendant as its agent to assist expert in making tests of lamps *held* admissible, 63 C 483
——expert may testify that such agent declared that the lamps made were good lamps, 63 C 484
declaration of agent as to right to act for principal admitted where latter recognized agency, 66 C 163, 89 C 353, 91 C 350
statements as to bad insulation of electric wires causing injury, made after it occurred, by servant of company liable, admissible, 70 C 67
declarations of agent as binding principal, 73 C 696, 74 C 107
failure of agent to object to condition of goods on receipt from carrier, admissible in favor of carrier, 75 C 176
one merely authorized to drive horse cannot make binding admissions as to its habits, 77 C 158
agent cannot make admission binding on principal by letter written after termination of agency, 79 C 127
telephonic conversation with one in office of defendant purporting to speak for it, admitted without proof of agency, 79 C 583
motorman on car not agent so as to bind street railway by admissions, 81 C 395
declaration of brakeman not binding on company as to conductor's authority, 82 C 577
partnership and agency are not proved by declarations of members as against any one but declarant, 82 C 685
statement of husband of predecessor in title to land only admissible against present owner when agency for wife appears, 83 C 547
declaration of agent of vendor of real estate admissible in action against him, 83 C 547
statement of agent inadmissible to enlarge scope of authority or to show apparent authority, 89 C 353, 91 C 350
declaration of salesman as to drawing of checks to his order not admissible to prove authority, 91 C 350
admissions of agent as binding on principal, 93 C 113
admission of adjuster before compensation commissioner as evidence against defendant, 93 C 289
self-serving declarations of deceased agent not admissible in evidence in behalf of principal, 95 C 149
declarations of general agent, relative to subject of agency and made in course of employment admissible against principal, 96 C 85
city sued for act of reservoir guard; his statement is inadmissible, 96 C 584
acts and representations of alleged agent *held* admissible under the circumstances, 97 C 296
after evidence has been offered of acts of one purporting to be defendant's agent to which defendant was so related that they tended to prove actual agency, his statements that defendant sent him become admissible, 101 C 593
admissions by agent must be within scope of agency, 106 C 423
report of accident to motor vehicle commissioner by authorized agent is declaration within scope of agency and admissible against owner, 107 C 670
report of accident to motor vehicle commissioner by party to action admissible against him and wife; agency to make it implied from operation of car, 112 C 421
in absence of evidence that driver of automobile was agent of owner, formal statement to motor vehicle commissioner not admissible against latter, 115 C 384
agency cannot be proved by declarations of alleged agent, 117 C 653
——in its discretion court may receive evidence of declarations of agent of what he did and said subject to subsequent proof of authority of agent, 117 C 653
——but it was error to admit in proof of agency not only declarations of agent of what he did but his declaration that he had authority to do it, 117 C 653
that clerk in store said at time of attack by cat on customer that they were going to get rid of it, not basis for inference that reason was because cat was known to be vicious, 117 C 667
letter by clerk of police board to city officials that board had retired officer admissible as communication within scope of implied powers of clerk, 119 C 155
statement by employee in building that light was out on stairway earlier in evening not admission because not made by agent expressly or impliedly authorized to give such information, 129 C 615

§ 13. Liability of Agent to Third Parties

known public agent not liable for goods bought for public use, 1 R 89

not liable for misapplication by principal of money handed over by agent, 1 R 238
not liable on bill procured as agent and accepted in that capacity, 2 C 438
——though he apply proceeds to his individual use, 2 C 438
agent not personally liable on note "I promise to pay" signed by him as agent where principal knew of it and had previously paid such notes, 2 C 680
not chargeable with interest on avails of property entitled to be held for indemnity, 3 C 184
one making unauthorized settlement is liable to parties injured, 10 C 278
liable if he clearly substitutes his own responsibility, 21 C 634
——though signing as agent, if unauthorized, 21 C 634
agent disclosing his authority is bound only in cases of fraud and falsehood, 22 C 384
rule that agent binds himself when he does not bind his principal, not always correct, 22 C 385
contract signed by part only of company's agents does not bind signers personally, 22 C 564
liability of agent determined from the intent evidenced by words used, 22 C 562
agent estopped to deny principal's title, in action for avails of sale made for principal, 26 C 373
agent's estate in insolvency liable for note fraudulently made, where principal is insolvent and surety is damaged, 28 C 223
actual perpetrator of positive obvious wrong is personally liable, 30 C 334
——acting as servant or agent, no excuse, 30 C 334
must so contract as to bind principal, or is himself bound, 40 C 37
——must contract in principal's name, or otherwise indicate him, 40 C 37
supervising architect not empowered to order work variant from written contract, 48 C 104
——builder takes the risk of principal not ratifying these orders, 48 C 104
general agent for life insurance company is responsible for moneys received by subagents when, 51 C 316
agent converting property of principal is liable in tort, 52 C 71
——does not affect that action on implied contract may be also maintained, 52 C 71
——trover the old form, 52 C 71
——attorneys are subject to this rule, 52 C 71
right and liability of agent where principal is undisclosed, 70 C 449, 736
liability of agent acting without authority or for irresponsible principal, 71 C 215, 88 C 233
officer of society *held* not liable for libel published by vote of the society, 72 C 54
a letter written and signed by an officer of a corporation, as such, affects him individually in so far as it relates to his personal obligations, 73 C 341
a negotiable note signed by trustees and referring to declaration of trust does not bind them personally if declaration expressly excludes personal liability, 75 C 683
bond signed B "attorney for" R *held* B's personal bond, 78 C 227
obligations assumed by agent acting in his own name bind him alone, 82 C 178
proof of agency as against third parties, 82 C 685
purchaser liable for price unless he is an agent of others, 82 C 693
nature of liability of agent who exceeds authority in signing contract; how pleaded, 85 C 216
signature binding agent as individual, 88 C 383
the opening of an account by an agent in his own name as "trustee" or "agent" does not put those dealing with him upon inquiry as to whether the fund actually belongs to another, 89 C 226
to avoid personal liability agent must disclose fact of agency and for whom he is acting, 92 C 376
agent liable individually for tort committed in course of principal's business, 97 C 402
——cannot defend in tort on ground that he acted for another, 97 C 402
under what circumstances both principal and agent liable for latter's tort, 99 C 526
where principal and agent are sued jointly in contract and it appears that agent was acting for principal alone, judgment should be against principal and in favor of agent, 99 C 640
where principal and agent are sued jointly and no motion to compel election between them is made, no error can be found on this score, 100 C 12
principal and agent jointly liable to third party for injury caused by agent's negligence, 100 C 14
application to agent of law of prima facie liability in case of bailee failing to produce goods, 101 C 246
agent personally liable on unauthorized contract, 101 C 626
one making sale for principal without authority does not personally warrant article sold or title of his principal, 103 C 110
——he is liable on implied warranty of authority if he acted honestly or for fraud if he knew or should have known he had no authority, 103 C 110

——broker selling mortgage for P who had stolen it is liable to purchaser on implied warranty of authority, 103 C 110

one who assumes to act as agent is charged with agent's obligations and is estopped to deny existence of agency, 104 C 257

right of agent or bailee to opportunity to investigate when sued for conversion of article by one other than principal claiming superior title, 107 C 574

——damages where plaintiff is holder of note as collateral security for debt of payee, and defendant is payee's attorney, 107 C 574

agent not liable for misrepresenting his authority unless third party is misled, 107 C 612

embezzlement by agent; question of agency is for jury, 112 C 39

if agent would avoid personal liability on contract, he should disclose fact that he is agent and identity of his principal, 116 C 83

——no duty on other party to inquire as to these matters, 116 C 83

——fact that material previously ordered by agent had been paid for by principal's check and letter signed by it had been sent plaintiff as to estimate for supplies, *held* insufficient to charge it with notice that defendant was acting as agent, 116 C 83

action to recover void preference is in tort and depositor and agent who actively participate in withdrawal of money are both liable, 116 C 336

defendant by conduct beyond scope of agency received goods from plaintiff which he appropriated to use of another; *held* he was liable in quasi contract for their reasonable value, 117 C 659

——not case of representation of agency which did not in fact exist, 117 C 659

——situation analogous to where money is received under agreement to use it for certain purpose which person receiving fails to carry out, 117 C 659

——common counts for goods sold and material furnished appropriate, 117 C 659

agent by making contract only on behalf of competent disclosed or partially disclosed principal whom he had power so to bind, does not become liable for its nonperformance, 123 C 434

agent contracting in own name without disclosing his representative capacity is personally liable; basis is estopped, 127 C 66

facts did not support claim that K impliedly warranted that he was agent of company and authorized to state that company would guarantee purchaser of its stock against loss, 128 C 52

——no contract between K and purchaser of stock to which such implied warranty could attach, 128 C 52

§ 14. Mutual Rights and Liabilities

liable to principal for want of competent skill and fidelity, 6 C 442, 52 C 71

for refusal to account; may become liable to principal for costs and expenses of suit, 22 C 208

factor taking note in his own name not, per se, liable to principal, 22 C 410

duty of agent to keep regular accounts, 25 C 386

——failure, affects compensation how, 25 C 387

agent authorized to make mortgage loan in principal's name can pass title to mortgage note payable to bearer, 51 C 219

insurance agent forfeits right to commissions on future premiums and renewals if discharged for gross misconduct, 51 C 314

——if wrongfully discharged may recoup indebtedness, 51 C 313

appointment of business agent "without accountability for the manner of conducting the same" does not justify neglect, 56 C 86

——neglect of business is not "an error of judgment," 56 C 86

cannot act for himself in a matter relating to his agency; commissioned to purchase cannot be himself the seller, 58 C 36

——principal may rescind on knowledge and reclaim the consideration, 58 C 36

——or may affirm and ratify, 58 C 37

suit by agent for commissions against vendor; vendor may show that agent acted solely for vendee, 59 C 395

——though agent openly acted for both parties, 59 C 395

agent not liable for acts of subagent, whom he is authorized to select if he in good faith selects one that is suitable, 66 C 465

agent cannot profit at expense of principal, 76 C 308, 81 C 623, 90 C 183

request to agent in line of duty equals command, 77 C 559

adverse possession between principal and agent, 77 C 578

if he purchases for himself where directed to purchase for principal, he is liable for principal's loss, 79 C 297

possession of agent is that of principal, 79 C 718

defrauding agent liable to principal for profits; forfeits commissions, 81 C 623

when agent is trustee and when debtor for funds collected, 88 C 202

Statute of Limitations as applied to action of principal against agent, 89 C 485

partners may limit agency between themselves, 91 C 54

where agency is created by contract, principal ordinarily has power but no right to revoke it, 97 C 164

——but this leaves him liable for damages on contract, 97 C 164

effect of unlimited right in principal to terminate at will, 97 C 707
remedies available to principal for fraud of agent, 99 C 367
liability of agent to principal for negligent conduct, 103 C 588
agent receiving funds in fiduciary capacity has obligations of trustee; duty to account; liability in damages, 104 C 169
Statute of Limitations does not run in favor of agent in fiduciary capacity as regards equitable remedies of principal, 104 C 171
——husband receiving personal property of wife to invest for her, 104 C 171
agent liable to principal for injuries caused by negligence, 106 C 231
——as where principal is passenger in automobile driven by agent, 106 C 232
advancement made by agent in purchase of piano *held* ratified so as to entitle him to recover from principal, 111 C 412
some courts hold that where policy forbids assured to make settlement, insurer becomes his agent to do so and may be held liable on ground of negligence for loss to assured over policy limits, 117 C 155
test of agent's conduct is honesty, good faith and reasonable prudence, 125 C 577
agent is a fiduciary with regard to matters within scope of agency, 125 C 578
principal may sue agent for latter's negligence, and in such a suit agent's negligence is not imputable to principal so as to constitute contributory negligence, 129 C 521

§ 15. Actions; Evidence

See also §§ 3, 12 supra

fact of agency must be first proved, 1 C 259
either principal or agent may in his own name sue at law on contract by agent, as such, without disclosing principal, 47 C 389
——in equity, as a rule only the real party in interest can sue, 47 C 389
letter directing person to make demand, as evidence that demand was made, 70 C 76
agent of undisclosed principal may sue on contract made in his own name, 79 C 104
chauffeur agent of owner though paid by another, 81 C 492
cannot prove act done by agent unless alleged, 81 C 492
that acts of a known agent shall be so stated does not apply to corporations, 85 C 513
evidence of agent's acts may be received before proof of agency, 85 C 513
jurisdictional facts depend on knowledge of agency, 85 C 602
necessary to elect whether to sue agent or principal, 87 C 528
how far principal estopped by judgment against agent, 87 C 528, 91 C 323
in an action for conversion against a corporation and an individual, agency must be alleged to support recovery against agent, 99 C 523
failure to allege act as done by agent to be taken advantage of by objection to evidence, 99 C 644
verdict against alleged principal and agent must be supported by evidence of agency, 100 C 123
——evidence reviewed and *held* not to justify verdict against principal, 100 C 123
terms of conditional sale contract and promissory notes not to be varied by proof of agreement between vendee and vendor's agent, 104 C 302
claimed agent cannot testify as to matters connected with the agency until evidence of relation is offered or promised, 104 C 302
when valuation of property by agent on tax list is admissible against the owner, 106 C 423
principle of agency, upon which rests common-law rule de part payment of one joint debtor tolling Statute of Limitations as to other, has no foundation in intent of parties, 116 C 557
proper way to take advantage of rule requiring act done by known agent to be so pleaded is to object to evidence, 124 C 500

ALDERMEN

See Municipal Corporations § 11

ALIENATION OF AFFECTIONS

See Husband and Wife § 16

ALIENATION, RESTRAINTS ON

See Wills § 47

ALIENS

a British subject who acquired lands in Connecticut before the Revolution is not an alien, K 414
widow of a foreigner who was naturalized and lived and died in Connecticut, and who remained absent from him in a foreign country against his consent is not entitled to dower, 2 R 468
deserter from British army, domiciled in Connecticut at time of treaty acknowledging independence of United States, was released by treaty from allegiance to Britain and became a citizen of the United States, 5 D 172
an alien husband should join wife in a deed of her real estate, 4 C 46
foreigner to hold real estate must be a resident of the State or of one of the United States, 34 C 334
nonresident alien may take personal property under the statutes of distribution, 51 C 439
——but life owner of real estate holds it as trustee for the State, 51 C 440
——if State waives right of escheat and removes disability, then life tenant holds as trustee for next of kin, 51 C 440
son born in Massachusetts of alien father resident there acquires thereby citizenship in the United States, 54 C 39
——and also in Massachusetts, 54 C 45
——subsequent naturalization of father added no strength to son's status acquired by birth, 54 C 45
collateral relative not alien may take through alien, 64 C 277
obligation of alien to nation within which he is a transient; no right to enter foreign nation, 67 C 143
cannot inherit or receive realty by devise, 69 C 416, 73 C 56, 74 C 138, 77 C 80
——can share in intestate personal property, 69 C 416
right of State to forbid alien to hold stock in corporation, 70 C 590
can receive income of realty, 73 C 56, 74 C 138
where testator directs a sale of real estate at death of life tenant and payment of proceeds to an alien, it is valid, 83 C 235
an alien cannot take any interest in realty situated in Connecticut, 83 C 237
have no constitutional right to attempt to change our laws or forms of government, nor, under pretense of being so employed, to engage in propaganda dangerous to public welfare, 96 C 605
not included in such constitutional guarantees as freedom of speech, hence cannot claim statute forbidding attacks on government to be unconstitutional, 96 C 614
duty of court to protect, 96 C 619
are included within Fourteenth Amendment to United States Constitution, 96 C 624
rights in general, 96 C 625, 97 C 219
equal rights clause in Italian treaty construed, 97 C 212
——applies only to resident aliens; hence discrimination in Workmen's Compensation Act as to nonresident alien dependents is valid and not unreasonable, 97 C 212
naturalization is a judicial proceeding and court's decision is a judgment; unassailable collaterally, 98 C 435
——state court not compelled to take jurisdiction of naturalization of alien under federal statute, but in absence of controlling state statute, it may act or decline, 98 C 437
——whether under statute any other than Superior Court can act in naturalization, quaere, 98 C 435
Congress may grant or withhold privilege of naturalization at its will, but a court must act judicially in determining qualifications required for naturalization, 98 C 435
——right of appeal in state court not dependent on practice in federal court, 98 C 435
——a naturalization proceeding is a "cause" or "action" within the appeal statute, 98 C 435
——when rulings deprive applicant of fair trial, appeal lies in state court, 98 C 435
Supreme Court reversed finding that applicant was unfit as not supported by subordinate facts, 99 C 551
applicant should be permitted to cross-examine adverse witness to show bias or prejudice, 99 C 551
denial of petition for naturalization by a city court is a judgment, subject to appeal, and to reversal if erroneous, 99 C 551
a court while conducting naturalization hearings acts judicially, 99 C 551
——petitioner is entitled to fair trial and full hearing, 99 C 551
——testimony *held*, under circumstances, not to create a conflict of evidence, and motion to strike out parts of finding should have been granted, 99 C 552
——position of examiners for United States and their obligations on naturalization hearings, 99 C 552
decree granting application for citizenship *held* not open to collateral attack in applicant's divorce suit, 108 C 304

ALIMONY

See Divorce § 9

ALLOWANCE TO DEFEND

See Divorce § 9

AMENDMENTS

See Appeal to the Supreme Court § 7 (3); Corporations § 2; Judgments § 19; Pleading § 26; Process § 9; Statutes § 8

AMUSEMENT RESORTS

See Negligence § 5 (3); Nuisance

ANCILLARY ADMINISTRATION

See Executors and Administrators § 17

ANIMALS

§ 1. In General
2. Dogs
3. Cattle and Sheep
4. Horses
5. Cats

§ 1. In General

to prevent trespassing, what may be done by neighbor, 14 C 4

——neighbor liable for poisoning fowls, 14 C 4

lawful impounder is not liable for unlawful detention by keeper of pound without his knowledge, 24 C 361

keeper of pound is not the agent of the impounder, 24 C 362

selectmen may purchase or hire a pound already erected, 26 C 415

meaning of "stray beast in suffering condition," in statute, 27 C 472

what is sufficient notice to owner under statute, 34 C 256

——keeping in public pound under statute, 34 C 257

reasonable care and treatment of animals in pound, 34 C 258

meaning of term "new pound," in statute, 45 C 165

pound damaged; location changed; *held* not a "new pound," and no new appointment of keeper required, 45 C 165

——subsequent repair of old pound is immaterial, 45 C 166

duty of keeper of pound to keep impounded animals in pound, and there only, 48 C 492

——unless removal is necessary to save them from injury, 48 C 492

authority of humane agent to kill animals in his charge, 71 C 262

ordinarily title to offspring follows that of dam, 81 C 101

liability for docile domestic animals not same as for ferae naturae, 89 C 1

where plaintiff not owner of land, he had no right under statute de damages by animals, 124 C 695

§ 2. Dogs

one or more instances may prove habit of biting according to circumstances, 25 C 95

property in, recognized, 31 C 127

anyone may kill mad dog, 31 C 128

owner bound to restrain mischievous dog on first notice, 31 C 128

——liable thereafter for all mischief by, 31 C 128

may be killed, if found doing mischief, 31 C 129

a noisy dog is a nuisance, 31 C 129

a ferocious dog is a common nuisance, 31 C 130

——defendant sued for killing same need not aver scienter, 31 C 131

——owner liable for injury by same except in preventing felony, 31 C 132

declarations of possessor of, after injury, that defendant owned dog *held* inadmissible, 37 C 91
injuries by, to sheep; construction of statute, de notice to selectmen of damage, 37 C 467
——irregularity of notice of no avail to defendant, 37 C 468
statute de liability of towns for damages to sheep by dogs, is valid, 48 C 333
——does not create a contract on part of town, 59 C 532
——town obliged to pay only the damages estimated by selectmen, 60 C 108
property in, does not stand on same ground as that in other domestic animals, 48 C 336
statute de liability of owner or keeper of, is undoubtedly constitutional, 54 C 461
injuries to sheep by; statute *held* not to create a contract obligation on part of town to pay, 59 C 532
when dog may be killed at common law, 61 C 9
under statute, allegation that dog was running at large *held* equivalent to allegation that dog was not under care of man, 61 C 10
——where defenses to killing were first that the dog was doing mischief, second that dog was a stray running at large, *held* pleadings defective, neither being a good defense alone, 61 C 10
——but defect *held* waived, no exception being taken, 61 C 10
not necessary that dog should be attacking an animate object to be "doing mischief" within statute, 61 C 11
——nor that mischief should be done with his teeth, 61 C 12
lying asleep upon a bed of young plants *held* mischief within statute, 61 C 11
right to kill under statute is not affected by consideration of value of dog compared with property destroyed, 61 C 12
——not necessary for justifiable killing that dog should be unlicensed, 61 C 12
under statute town obliged to pay only the damages estimated by the selectmen, in absence of fraud or mistake, 62 C 108
——such an estimate by selectmen is a condition precedent to recovery, 62 C 108
liability of towns for damage under statute is strictly limited and peculiar; claimant must show what, 62 C 107
——history of statute reviewed, 62 C 107
right to kill dog doing mischief; large dog in company of child of six years not "under care," 74 C 8
administrator's liability as to damage done by dog of intestate, 74 C 85
liability for damage by, at common law and under statute, 77 C 569
statutes construed; right of property in, and liability for damage by; no action lies for killing unlicensed dog, 79 C 427
action for killing; pleading statute; costs, 80 C 434, 84 C 640
owner not liable where injury is due to tormenting dog, 81 C 320
——other occasions when he is not liable, 81 C 320
whether dogs are worrying, pursuing, or wounding sheep, is for the jury, 84 C 640
kennel license not void because town clerk carelessly and inartificially drew it, 84 C 640
kennel license not vitiated because part of the dogs of the kennel are kept at the house of each of the owners in same town, 84 C 641
"kennel" means a pack or collection of dogs kept or bred for hunting or sale, 84 C 641
failure to apply for a kennel license on time will not vitiate one granted later upon payment of full year's fee, 84 C 641
placing of tag or plate on dog required by law not part of registration, 84 C 641
——need not be proved in action for killing registered dog, 84 C 641
liability of town to pay for sheep killed by dogs, 86 C 568
——town's liability purely statutory; all statutory requirements must appear, 86 C 568
damage from dog bite is founded on tort, 86 C 710
owner not responsible for error of town clerk in registering dog in name of another, 100 C 127
——one who kills dog so registered liable in damages, unless killing is for protection of person or property, 100 C 127
registration is question of law where facts are not disputed, 100 C 127
statute making owner of dog liable for injury to person or property is constitutional, 105 C 88
whether recovery may be had, under dog statute, for injuries resulting from mere fright, 105 C 88
statutory liability for injury done by dog; exception against one who is committing trespass or tort construed, 106 C 200
exception in statute as to liability for injury done by dog includes act done to dog likely to provoke assault, 106 C 200
——whether on private land or highway, 106 C 200
overturning of car due to dog running out and into front wheel justifies recovery against owner under statute, 107 C 622
——purpose of statute, 107 C 622
——meaning of "trespass or other tort" of injured person which will defeat recovery, 107 C 622
——does not include mere negligence, 107 C 622
where evidence showed dogs had killed sheep on certain day and, after others were later killed, defendant denied ownership though

dead bodies were found on his premises, inference that dogs killed sheep was proper, 108 C 152
——under statute where owner notifies selectman and he and someone designated by owner agree on damages, without calling in third person, town may recover that amount from owner of dogs, 108 C 152
——but strict compliance with statute is condition precedent to recovery, 108 C 152
——an estimate made by sheep owner and selectman is not compliance with method prescribed by statute, 108 C 152
statute de liability of owner for damage done by dog, 117 C 103
——exception originally read in where dog was protecting master's premises against felony or when injured party provoked dog, 117 C 106
——exception in 1911 where injured party was committing trespass or tort; torts included those dog would likely defend, including those committed on itself, 117 C 106
——complaint should negative existence of circumstances which would bring plaintiff within exception, 117 C 103
——and under general denial plaintiff is put to burden of negativing exception, 117 C 103
where defendant voluntarily added to general denial an affirmation of exception he took upon himself burden of proof thereof, 117 C 103
one who treats a dog as living at his house and undertakes to control its actions is the owner, keeper or harborer as affecting liability for injuries caused by it, 117 C 307
under statute only exception to liability of owner or keeper of dog who does damage is where injured person was committing trespass or other tort, 117 C 307
——construed as confined to trespasses or torts against owner or his family which dog would instinctively defend, 117 C 307
——conduct not within these limits, though contributorily negligent, not a defense, 117 C 307
——finding sustained as to facts supporting conclusion that defendants kept and harbored dog at time it bit plaintiff, 117 C 307
wife who cared for dog along with husband, fed it, tied and untied it, referred to it as "my dog" *held* to have "harbored" dog within meaning of statute, 119 C 646
——that she did not hold legal title jointly with husband, nil sig., 119 C 646
anything short of exercise of dominion and control similar to that of owner in possession is not "possession" of dog under statute defining keeper of dog, 126 C 121
——so one who agreed to feed and water dogs which were kept in owner's runway, while latter was away, not keeper, 126 C 121
under statute providing that if any dog is nuisance from barking, selectmen may make order de restraint or disposal, order must concern specific dog, 127 C 71
——order forbidding plaintiff from keeping more than ten dogs of either sex over three months of age void, 127 C 71
——under circumstances of case remedy by injunction proper, 127 C 71
maintaining a kennel is an activity recognized as legal and proper, 127 C 73
conclusion of court that defendant's negligence in failing to maintain proper lookout was proximate cause of death of dog, upheld, 127 C 686
under our common law there is right of action against one who negligently kills or injures dog, at least where properly registered, though act is unintentional, 127 C 686
——action for negligent killing not within statute making liable anyone who shall "unlawfully kill or injure" registered dog, 127 C 686
——but right to such action is implicit in another statute which recognizes right of property in dogs, 127 C 686
dogs are personal property and subject to larceny, 127 C 690
where husband thrust dog in plaintiff's face and it bit her, absent wife as well as husband liable under statute de joint owner and keeper, 129 C 208

§ 3. Cattle and Sheep

NOTE: For liability where dog kills sheep, see § 2, supra

one not absolute owner but having care and control liable for damage done by cattle in inclosure sufficiently fenced, 6 C 530
selection of one, as forfeiture for being at large; acts *held* not to constitute such selection, 14 C 191
no action lies for trespass by cattle on land if fence legally insufficient, 14 C 292
trespass by cattle; where insufficient fence, plaintiff may show cattle to be unruly, 16 C 200
"to suffer to go at large," construed, 19 C 505
owner of sheep to exercise what care to restrain, 19 C 506
authority to make by-law restraining cattle authorizes impounding, 26 C 412
"going at large" discussed, 27 C 479
landowner has exclusive right of pasturing on highway, 28 C 165
cattle breaking an insufficient fence may be impounded, 32 C 220
cattle trespassing on private land need not have been roaming on highway, 37 C 36
——"owned or occupied" in statute de im-

pounding animals at large means actual or constructive possession, 37 C 36
animal rescued must have been lawfully impounded for penalty to apply, 37 C 41
no obligation to fence against unruly cattle, 37 C 123
keeper may retake cattle illegally released by third person, 45 C 168
——replevin will not lie against owner until demand, 45 C 168
an unlawful impounder is not liable for malicious injury done by a stranger, 52 C 481
liability, where vicious bull is allowed to trespass, 79 C 266
cattle are at large under statute if they roam without keeper or restraint, 94 C 548
action under statute is founded on negligence of owner, 94 C 548
sufficient evidence existed to show cattle were at large on highway and were so unruly that no fence restrained them, 94 C 548
care required in driving cattle upon a much used highway, 96 C 40
statute de damage by cattle "at large" upon highways considered, 96 C 661
whether cattle at large contrary to law, or unruly and not restrained by ordinary fences, or whether owner voluntarily allowed them to trespass, *held* questions of fact, 96 C 661
right to go on premises to get animals wrongfully impounded and to use precautions against known danger, 105 C 342
landowner may not impound cattle which entered on his land because of insufficient fence, 105 C 342

§ 4. Horses

keeper placing horse in his private inclosure for convenience thereby ends the effect of impounding, 48 C 492
——must then deliver animal to owner, on demand, 48 C 492
——constable knowing such facts and selling horse at auction, *held* a mere trespasser, 48 C 492
horse unlawfully in highway is a nuisance, 49 C 117
——owner liable for on ground of negligence, 49 C 117
fright of horse at articles in highway, 82 C 199
need not charge de lack of driver's knowledge that horse was vicious if there is nothing in the evidence to suggest a want of prudence, 82 C 206
whether father's negligence can be imputed to his daughter who was driving with him at the time of the injury, quaere, 82 C 206
what constitutes unsoundness in a horse, so as to create breach of warranty, 83 C 666
unsoundness, how pleaded, 83 C 670
care should be taken with a vicious horse to protect an ordinarily prudent person, 84 C 248
negligence in leaving vicious horse in street, 84 C 248, 86 C 302
servant's knowledge of vicious horse imputed to owner, 86 C 302
criminal offense to "permit" horse to be at large on highway; *held* "permit" means lack of reasonable care as well as affirmative or voluntary act, 104 C 493
conclusion of court that horse's death was caused by lead poison in feed sold to owner sustained, 117 C 510
where court found defendant exercised reasonable care in care and custody of horse, the further finding that its presence on highway could not be explained was not sufficient to invalidate conclusion that defendant exercised such care, 117 C 679

§ 5. Cats

cat as thing of value; worrying by dog as constituting doing mischief, 74 C 7
trespass by cat may create presumption of negligence, 89 C 1
liability for injury from vicious cat, 89 C 1
defendant not liable for attack made on plaintiff by cat in former's store in absence of knowledge that it was vicious, 117 C 667
——that clerk said at time that they were going to get rid of cat not basis for inference that reason was because cat was known to be vicious, 117 C 667

ANNUITIES

sum payable to widow on certain day each year for life in consideration of relinquishing dower *held* annuity and not apportionable, 2 C 659
lapse of time affords no presumption of payment, 7 C 420
annuity of $2000 to niece, to support herself, nieces and nephews she then had under her care and such other persons as she might from time to time request to be members of her family; *held* disposition of annuity entirely in her hands, 21 C 257
can be no final distribution until death of annuitant where executor has right to retain property for purpose of paying annuity, 46 C 174
testator gave income to sister for life, after her death an annuity to a niece, and by codicil an annuity to S; *held* S's annuity ran from death of testator, not from sister's death, 50 C 574
gift of income from money is not an annuity, 53 C 102
where an annuity charged upon fund was to

be apportioned pro rata, *held* executors could retain sufficient of invalid portion to secure share of annuity, 53 C 260
annuities to children during continuance of trust, *held* payable to family of deceased child, 53 C 261
"income in cash of $1200 a year" to widow *held* payable annually and not in parts in discretion of executor, 55 C 256
satisfied by acceptance of necessities in lieu thereof, 64 C 496
life annuities payable quarterly are valid; included in debts, 73 C 57
excess of income from fund agreed to by parties as sufficient to produce annual sum specified by testator should be added to principal, 73 C 670
definition, 76 C 504, 96 C 491
——if given by will, payable from death; if in lieu of dower, not apportionable, 76 C 504
"interest and income" of $4500 to widow; *held* she was entitled to income at average rate before investment of fund, and net income after investment, 77 C 94
annuities payable out of "net annual income"; deficiencies not made up from year to year, 78 C 606
provisions of will de annuity *held* to make each year a distinct financial period, 79 C 553
annuitants' rights *held* not transmissible by will or descent nor alienable for longer period than owner's life, 83 C 369
——apportionable when, 83 C 369
under terms of will, the right, alienable by deed or will, to portion of net annual income after a ten-year period *held* to vest in each child and personal representatives of deceased child, 83 C 370
periodic payments by way of annuities not apportionable, 87 C 398
annuitants not entitled to contribution for resisting claim unless their rights will be put in jeopardy by allowance of claim, 93 C 590
court may take judicial notice of calculations or computations made in annuity tables, 96 C 472
——use proper in determining sum which would compensate for failure of deceased to provide sum which would produce certain income yearly during life of promisee, 96 C 472
——also entitled to use statements of computations made from such tables admitted in evidence without objection, 96 C 472
ante-mortem mortgage to secure payment of life annuity, 102 C 318
——executors not bound to exonerate real estate, 102 C 318
——method of paying annuity an administrative question, 102 C 318
for tax purposes, annuity should be figured as price of annuity contract, 102 C 318
trust to pay annuities to persons living at testator's death and then to their children valid, 105 C 261
——disposition of excess income or excess principal created by sale of real estate, 105 C 261
proper sum should be set aside to pay annuities, 109 C 7
will directed trustee to pay annuities in monthly instalments of specified amounts; made provision for disposition of income if it should be "insufficient in any year to pay in full all of the monthly legacies"; *held*
——that predominant thought of testator was that he was creating annuities, 117 C 417
——that any excess of income is to be determined upon yearly basis and paid over to those entitled only at yearly intervals, 117 C 417

ANNULMENT OF MARRIAGE

See Marriage

APPEAL

See Administrative Boards and Commissions; Appeal to the Supreme Court; Committees and Referees § 6; Court of Common Pleas; Criminal Law and Procedure § 20; Eminent Domain § 18; Gasoline Stations; Intoxicating Liquor § 7; Justices of the Peace § 4; Juvenile Court; Municipal Courts § 2; Probate Court § 7; Public Utilities Commission § 3; Railroad Commissioners; Superior Court § 7; Taxation § 13; Unemployment Compensation Act; Workmen's Compensation § 31; Zoning § 7

APPEAL TO THE SUPREME COURT

§ 1. In General; Right of Appeal
2. Jurisdiction and Powers of Supreme Court Generally
3. Judgments and Rulings Reviewable
4. ——In General
5. ——Finality of Judgment
6. ——Questions of Fact and of Law
7. ——Discretionary Rulings
(1) General Rule
(2) Miscellaneous Rulings
(3) Rulings during Trial; Motions; Amendments
(4) Evidential Matters
8. Necessity of Raising Point in Trial Court
9. ——In General
10. ——Miscellaneous Cases
11. ——Evidential Matters
12. Record
13. ——In General; What Constitutes
14. ——Necessity that Error Appear of Record
15. Taking the Appeal; Procedure
16. ——In General; Stay of Execution
17. ——Form and Contents; Taking Appeal from Judgment and from Action on Verdict
18. ——Time for Taking; Extension
19. ——Notice of Appeal
20. Finding
21. ——In General
22. ——When Finding Necessary
23. ——Right to Finding; Action by Judge
24. ——Request for Finding; Draft Finding
25. ——Form and Contents Generally; Presenting Rulings on Evidence
26. ——Finding in Jury Cases; Claims of Proof; Charge
27. ——Correction and Review
(1) In General
(2) Admitted or Undisputed Facts; Facts Found Without Evidence
(3) Immaterial or Useless Corrections
(4) Attempt to Change Finding in Bulk
(5) Procedure
(6) Taking up Evidence
(7) In Jury Cases
(8) Particular Cases—Miscellaneous
(9) Particular Cases—Negligence
28. ——Construction of Finding
29. Appeal from Action of Trial Court on Verdict; Taking Up the Evidence
30. Assignment of Errors
31. ——In General
32. ——Form and Contents
33. Memorandum of Decision
34. Bill of Exceptions; Cross-Appeal
35. Rectification of Appeal
36. Error
37. ——In General; Miscellaneous Cases

§ 1 Appeal to the Supreme Court

38. ——Harmless Error
    (1) In General; Miscellaneous Rulings
    (2) Rulings on Pleadings
    (3) Rulings on Evidence
39. ——Error Waived
40. ——Error Cured
41. ——Favorable to Appellant
42. ——Induced by Appellant
43. ——Trivial Error
44. Practice and Procedure in Supreme Court
45. ——Miscellaneous Rulings and Customs
46. ——Following Trial Court and Counsel
47. ——Parties
48. ——Judgment of Supreme Court and Its Effect
    (1) In General
    (2) New Trial or Reversal in Whole or in Part
    (3) Remittitur
49. ——Pleas and Motions
    (1) Pleas in Abatement and Motions to Dismiss
    (2) Miscellaneous Motions
50. ——Costs
51. ——Arguments and Briefs
52. ——Judicial Notice
53. Appeals from a Judge
54. Reservations

Note: Prior to 1882 there were four methods by which cases were brought before the Supreme Court: writ of error, motion in error, motion for a new trial, reservation for advice. See Reporter's note in Zaleski v. Clark, 45 Conn. 397, 405, for description of these methods. In that year, the appeal was substituted for the motion in error and motion for a new trial. In 1929 most of the statutory provisions regulating the appeal were repealed, and the judges of the Superior Court were authorized to make rules concerning the practice and procedure on appeal. The rules, effective February 1, 1931, changed and simplified the statutory procedure in some particulars but in general did not alter it radically. Most of the cases, even those prior to 1882, have some practical value but they must be read in connection with the procedure in effect at the date of decision. A few cases dealing with the old procedure have been omitted. They are available in the old digests.

See also Administrative Boards and Commissions; Charge to Jury § 3; Criminal Law and Procedure § 20; Nonsuit; Verdict § 16; Workmen's Compensation § 31; Writ of Error; Zoning § 7

§ 1. In General; Right of Appeal

party cannot appeal from judgment in his favor, 1 R 319

under old practice, frivolous motion in error was not to be reserved, 13 C 216 (note)

administrator of appellant may prosecute motion for a new trial, 25 C 80

revision of proceedings in equity obtained how, 39 C 63

four different modes of bringing case before Supreme Court, 45 C 405 (note)

under the act of 1882, a party had an absolute right to appeal, 53 C 238

reports of Supreme Court are property of the State, which may copyright and say when and how they may be published, 53 C 419

right of State to appeal is not limited to errors during trial; "arising on trial" means what; may extend to earlier part of proceeding, 58 C 100

"in the trial" is not to be taken in a strict sense, 58 C 101

appeal statutes give right of appeal in both civil and criminal cases, coextensively, and embrace all matters which could have formerly been reviewed upon motions in error, writs of error, or motions for new trial, 58 C 102

party may appeal, though not in fact aggrieved, if he "thinks himself aggrieved," 60 C 427
finding as to knowledge is conclusive; is one of fact, 65 C 553
right depends on possibility of, rather than actual grievance, 69 C 715
who are clerks of Supreme Court; duties; where papers are to be filed, 70 C 337
a receiver has no vested right of office and cannot appeal from an order of removal by a tribunal having jurisdiction, 70 C 473
effect of death of judge before making a finding, 76 C 534; but see § 5825, Rev. 1918
right of taxpayer to appeal in suit against city, 81 C 235
death of plaintiff does not prevent appeal if administrator or assignee is made a party, 82 C 208
if nonsuit properly granted because of difference between allegation and evidence, no appeal; new suit proper procedure, 82 C 237
one who cannot share in fund in any event cannot appeal from decision as to its distribution, 82 C 320
right of appeal is statutory; not dependent on constitution or natural justice, 83 C 128
Legislature may make decision of trial judge final, as in matter of election as to sale of liquors, 83 C 330, 88 C 141
a general rule of law once declared is of universal application in this jurisdiction, 84 C 89
appellant cannot complain of rulings upon questions in which he has no interest, 84 C 208
statute authorizing party "in whose favor" verdict has been rendered to appeal from court's setting it aside, permits appeal by defendant against whom verdict was rendered, 84 C 262
an academic question may be considered on appeal if it has a bearing on costs and if case has been prosecuted to effect, 85 C 272
unperfected attempt to take appeal does not affect jurisdiction of trial court; on withdrawal of proceedings case stands as though no appeal had been taken, 85 C 445
bill of exceptions abolished in Connecticut in 1806 except in summary process, 85 C 619
——from 1806 to 1882 questions of law arising from rulings on evidence or in charge were raised by motion for new trial, and since 1882 by statutory appeal, 85 C 619
parties have no vested right of appeal, 86 C 425
finding impossible on account of death of judge may be grounds for new trial or perhaps writ of error, 87 C 608
until modified by a later decision, Supreme Court's opinion on a former trial is the law of the case, 91 C 430
an appeal conditionally withdrawn is purely academic, 93 C 413
issues in a verdict correctly reached stand if other issues can be retried without harm to either party, 94 C 503
judgment was rendered in favor of one of two defendants and against the other in a severable cause of action ex contractu; *held* appeal in one case does not affect the other, 97 C 224
one who has option to purchase interest of one of several co-tenants is not aggrieved by decree in partition merely directing sale and ordering proceeds paid into court, 97 C 514
——but may appeal because he "thinks himself aggrieved," 97 C 518
——but judgment will stand unless there is error injuriously affecting him, 97 C 518
appeal does not preclude modification of judgment by lower court during term, 98 C 741
one purpose of rules is to forestall ineptitude of counsel, 98 C 812
where losing party appeals from judgment winner may appeal from refusal of court to correct finding, 99 C 516, 522
right of appeal depends upon being party to action, not on fact of being aggrieved, 101 C 733
——party who never appeared or made claims in case, but was affected by judgment was permitted appeal, 101 C 734
in action for specific performance, proper to direct defendant to take steps to protect plaintiff's rights pending appeal, 102 C 191
right of party who does not appear in trial court or plead to appeal where decision affects his rights, 102 C 600
one sued jointly with another for tort has no grievance in direction of verdict for that other, 103 C 29
motion for allowance to defend appeal in divorce action should be addressed to Superior Court, 103 C 189
valid judgment must stand, though it enables prevailing party to perpetrate fraud in another court, 103 C 413
termination of appellate proceedings is a "judgment"; execution may be issued and lien filed upon it, 103 C 732
rules cannot be entirely disregarded in favor of litigant who conducts his own case, 103 C 744
when State appeals in criminal case, permission of presiding judge must be obtained at time of judgment; practice outlined, 106 C 114
questions which may be wholly academic will not be considered, 106 C 698
when an appeal is "finally disposed of," 107 C 439
appeal to Superior Court by landowner in

condemnation proceedings is still same appeal upon city's appeal to Supreme Court, 107 C 439

on appeal from award of damages by committee, same principles apply as in hearing before court or jury, 109 C 212

where equities in appellee's favor, appeal relating to pleading and procedure will not prevail unless adjective law requires, 109 C 292

not a constitutional right but a statutory privilege, 110 C 536

death of party revokes attorney's authority to take appeal, 110 C 646

where layman took his own appeal, technical defects were overlooked, 111 C 52

nature of appeal in disbarment proceedings against attorney; parties, 112 C 272

errors in charge or rulings, or sufficiency of evidence to support conviction, should be raised by appeal or motion to set aside and not by motion in arrest, 115 C 672

plaintiff not debarred from appeal because he did not attempt to try useless issues but suffered nonsuit for failure to plead special defense, 116 C 29

lawsuits not determined by consideration of philosophy in abstract but by application of legal principles to facts of particular case, 122 C 234

though party prevails on trial, if there has been in course of it a ruling adverse to him which may aggrieve him he may appeal, 122 C 452

——proper course for appellee (defendant) to take in order to avail himself of claimed error included in bill of exceptions, should this court not order new trial, was to file cross-appeal from judgment, 122 C 452

right to appeal does not depend upon fact that one has actually suffered grievance but upon fact that one considers himself aggrieved, 122 C 464

statute permitting State to appeal in criminal case does not subject accused to double jeopardy or violate his rights under United States Constitution, 122 C 529

appeal lies by either party in disbarment proceedings, 122 C 639

where plaintiff recovered verdict against two defendants and trial court set it aside as to one, other not aggrieved by that ruling, 123 C 151

scope of appeal allowed is defined and limited by terms of statute, 123 C 655

allowance of multiple appeals in a single action would not accord with sound policy which favors speedy disposition of actions, 124 C 647

in action for declaratory judgment where court refused to determine question whether right to sell liquor had been lost by restaurant, its receiver was aggrieved and could appeal, 125 C 268

where defendant's counsel, who appeared specially for purpose of plea in abatement, after it was overruled appeared generally, *held* no waiver of right to pursue appeal from the ruling with an appeal from the judgment finally rendered, 125 C 491

where summary process actions are tried upon the facts in courts whose decisions are reviewable only in Supreme Court, they must be presented to it by writ of error, 125 C 543

——but where such writ has been taken from municipal courts or justices of peace to Superior Court or Courts of Common Pleas and there decided, an appeal lies to Supreme Court, from the judgment, 125 C 543

appellate court will not concern itself with trifles, refined reasoning, etc., 126 C 634

change in personnel of Supreme Court is no ground for reopening question previously settled in opinion in which two judges dissented, 129 C 84

appeal from board to Superior Court governed by previous case involving same principles though latter was action for declaratory judgment, 129 C 136

§ 2. Jurisdiction and Powers of Supreme Court Generally

case not appealable cannot be made so by consent of parties, 2 R 378

——though parties consent to amend by raising damages, 2 R 60

has jurisdiction of errors appearing from files, records, or exhibits below, 6 C 561

judgment in trial court necessary, 7 C 439, 63 C 576

will take no cognizance of case not regularly before court below, 8 C 165, 15 C 341

may decline to give an opinion as to validity of a proposed act, at request of General Assembly, 33 C 586

is a court for correction of errors in law only, 34 C 174

——not affected by statute de spreading finding of facts on the record, 34 C 175

Supreme Court will try an issue of fact on a plea in abatement of original process brought before it, 41 C 188

Supreme Court is bound by finding of lower court; cannot on appeal remand for amendment, further hearing, or finding, 52 C 274, 53 C 150

——where record omits facts essential to appellant's claim, can simply affirm the judgment, 53 C 150

lower court cannot give Supreme Court jurisdiction merely by reserving the case for its advice, 58 C 66

where lower court did not find adverse possession, but only facts tending to prove it, Supreme Court cannot find it, nor whether lower court should have found it, 62 C 82

history and jurisdiction of Supreme Court in general, 64 C 432
——is court for revision of errors in law; what these are; court may determine what are, 64 C 432
——Legislature cannot impose other duties, but may control exercise of its jurisdiction, 64 C 432
——act of 1893 as to appeals construed, 64 C 432
under act of 1895, court will not review conclusions of trial court where purpose is not to correct finding but to get new trial, 67 C 466
act requiring retrial of facts is unconstitutional, 67 C 505
want of jurisdiction in lower court will not destroy jurisdiction of this court on proper appeal, 68 C 560
power to compel trial judge to specify grounds on which demurrer is sustained, 69 C 485
power to pass order as to appeal in one district while sitting in another, 70 C 500
rule, stare decisis, considered, 71 C 471, 89 C 98
Supreme Court has no jurisdiction of appeal in nonsuit until trial court has denied written motion to set aside the judgment, 72 C 707
power of Supreme Court over action before appeal is perfected, 76 C 537
has no authority to issue mandamus, 80 C 326
Supreme Court has jurisdiction on appeal in case where a taxpayer has asked to be heard in a suit against a city which involves his property, 81 C 229
after trial court has refused to set verdict aside and has accepted it, Supreme Court cannot order it to direct a different verdict; new trial is only remedy, 81 C 578
power to order trial court to make a statement of the evidence in aid of an appeal from a nonsuit, 82 C 132, 135
motion for new trial for verdict against evidence, addressed to Supreme Court, is improper, 83 C 569
Supreme Court cannot consider document which trial court has excluded, though printed; function of determining facts from evidence is in trial court exclusively, 87 C 32
power to direct trial court to certify evidence, 88 C 211
propriety of a directed verdict questioned; this court can grant new trial for error, 92 C 252
court has supreme and final jurisdiction to review principles of law in trial of cases, 100 C 297
——application by prisoner detained in extradition to review refusal of bail pending appeal from dismissal of habeas corpus writ brought by third person in his behalf, 100 C 297
Supreme Court is court of last resort for correction of errors, 102 C 529
——jurisdiction relates to determination of principles of law not to trial or retrial of facts, 102 C 529
——but finding may be so grossly at variance with fundamentals of judicial procedure as to amount to illegal action and so constitute error in law, 102 C 543
statute authorizing reversal if facts found "against the evidence" is unconstitutional, 102 C 529
Supreme Court without authority to grant application for bail which is not appeal from ruling of court, 109 C 738
Supreme Court is a court to review decisions of lower courts to see if errors of law have occurred in particular controversies, 111 C 75
——scope of appeal is limited and defined by statute, 111 C 75
jurisdiction to entertain appeal cannot be conferred by waiver or consent, 115 C 678
duty of Supreme Court in appeal from assessment and appraisal, 117 C 82
jurisdiction of Supreme Court statutory; in absence of judgment there can be no appeal, 123 C 102
not province of Supreme Court to re-examine evidence, find facts and arrive at different conclusion from that of trial court, 128 C 139

§ 3. Judgments and Rulings Reviewable

§ 4. ——In General

appeal lies from judgment on hearing in damages after default, K 17
does not lie where declaration shows matter in dispute too small for appeal, K 35
——though ad damnum shows appealable demand, K 35
does not lie from judgment for defendant in qui tam action for theft, K 269
will not generally reconsider questions of law after once giving advice on reservation, 26 C 110, 43 C 255, 44 C 391
order erasing case from docket may be revised for error, though it does not appear who made the motion, 34 C 185
will not hear questions which might have been made and decided before, 35 C 222, 47 C 361
qui tam action brought on statute for a penalty is a civil one and appealable as such, 43 C 169
denial of petition for new trial reviewable, 58 C 69
judgment in case of civil contempt of court is reviewable, 58 C 497
of nonsuit where plaintiff introduced no evidence, *held* not a judgment on the issue, 59 C 202

decisions as to issuance of liquor licenses reviewable, 64 C 526, 75 C 360, 79 C 680
joining appeal from reviewable judgment to one not reviewable does not invalidate former, 64 C 535
if no judgment has been rendered, appeal is void, 66 C 264
when taxation of costs reviewable, 67 C 259, 74 C 107
——in mandamus, 68 C 219
——refusal of costs on withdrawal of action, 70 C 380
compelling garnishee to disclose not reviewable, 67 C 260
refusal of damages in highway case reviewable, 68 C 409
defendant who refuses to plead over after demurrer overruled is not deprived of right to controvert such ruling on appeal from final judgment against him upon hearing in damages, 69 C 476
appeal lies wherever writ of error formerly lay, 69 C 483; but see 83 C 690 for appeal in equity
as to judgments removing receiver, 70 C 473
judgment in accordance with advice of Supreme Court on reservation not reviewable, 71 C 584
denial of mandamus writ, 73 C 327, 83 C 554
judgment on hearing in damages when reviewable, 73 C 681, 75 C 79
arbitration proceedings under rule of court reviewable, 73 C 715
when demurrer is overruled, and party demurring pleads over, he retains his right of appeal, 74 C 127
——but if pleading to which demurrer is sustained is replaced by another, it drops out of case, 74 C 128
meaning of "action," 79 C 47
judgment by consent not ordinarily reviewable, 79 C 79
——but recognition that judgment necessarily follows from previous ruling is not consent, 72 C 257
denial of nonsuit not ground of appeal, 80 C 298, 88 C 248, 99 C 197
ruling on demurrer need not be considered if also presented by finding, 82 C 298, 85 C 50, 68
appeal that is abatable remains so even when combined with one that is not, 82 C 386
no appeal if statute makes Superior Court's judgment final, 83 C 330, 88 C 141
appeal may be taken on sustaining demurrer to second defense after going to trial on general issue, 83 C 634
cannot review error where finding based on evidence improperly admitted, only remedy is new trial, 84 C 694
a judgment on the merits can only be attacked in proper proceedings; in a second action, wherein it is pleaded, its correctness cannot be passed upon, 85 C 271
appellant cannot as matter of right raise questions of law that do not appear in his request for finding though they appear in record, 85 C 613
appointment of a committee to appraise property can be appealed from, 85 C 663
Supreme Court does not consider contents of written instrument excluded by trial court even if it is in record, 87 C 32
where statute declares trial judge's decision is conclusive, no appeal lies, 88 C 141
Supreme Court to end litigation will decide a case improperly brought, 88 C 157
in construction of wills, premature questions will not be passed on, 88 C 269
whether Supreme Court has jurisdiction to review evidence in disbarment proceedings, quaere, 88 C 447
no appeal from refusal to direct a verdict, but from denial of motion to set aside verdict, 89 C 117
cannot challenge correctness of ruling on demurrer if pleading demurred to is replaced with another to meet the objection, 90 C 261
statement of date in judgment file like all matters in record conclusive unless altered in proper way, 90 C 553
if question raised and decided by demurrer is later decided contrary on subsequent pleadings, it will be reviewed, 90 C 694
action on report of committee, under charter provision that it may "be accepted or rejected at the discretion of the court," reviewable, 91 C 639
judgment in summary process reviewable only by writ of error, 92 C 144, 95 C 69
only errors affecting validity of judgment entitled to consideration, 92 C 293
order for printing evidence reviewable, 95 C 451
order in nature of mandamus made in pending action reviewable, 96 C 718
refusal of trial judge to make a finding is not subject matter for appeal, 97 C 279
obiter dicta in trial court's memorandum of decision not basis of error, 98 C 397
"action" as used in statutes defined; that no distinct adverse party not always conclusive, 98 C 435
when an appeal lies in naturalization proceedings, 98 C 436
no appeal lies from refusal to make findings of facts; remedy stated, 99 C 22
one may appeal from overruling a demurrer though he has pleaded over, 99 C 56
——but where demurrer is sustained, if defective pleading is voluntarily replaced it drops out of case, 99 C 56
——but if one pleads over and final judgment is in his favor he is not aggrieved by adverse ruling on demurrer, 99 C 56

denial of motion to dismiss action as to certain defendants is not reviewable, 99 C 197
——nor is denial of motion to direct a verdict as to them, 99 C 203
no appeal from ruling on original pleading voluntarily replaced by another, 99 C 389
in naturalization case, erroneous rulings in interlocutory proceedings or as to evidence may cause reversal, 99 C 551
Supreme Court has power to review rulings on matters not committed to sole discretion of trial court, 100 C 297
refusal to direct verdict not assignable error, 100 C 492, 556
appeal may be taken if motion to set aside verdict as against evidence is denied, 100 C 612
——inadequacy of damages may be urged as reason for such moton, 100 C 612
on appeal from direction of verdict for accused in criminal case, sole issue is whether evidence might have warranted a verdict of guilty, 100 C 637
——insufficiency of information not in question, 100 C 637
motion, not passed on by trial court, offers no basis for appeal, 100 C 727
guardianship account on appeal from Probate Court presents reviewable question, 101 C 349
appeal from order erasing case from docket, 101 C 356
orders de accounting as reviewable interlocutory judgments, 102 C 96
conclusions and inferences in memorandum of decision on referee's report are not reviewable, as memorandum is no part of record, 102 C 96
——question is, does report adequately support judgment, 102 C 96
rulings on evidence de damages not reviewable, where issues found for defendant, 102 C 331
refusal of trial court to order printing of evidence not appealable; remedy is application to Supreme Court, 102 C 480
if points at issue on demurrer are again decided on trial, only latter will be considered, 102 C 488
reviewable questions on appeal from election petition, 102 C 579
interlocutory order de certification of evidence by compensation commissioner appealable, provided final judgment has been entered, 102 C 702
refusal of trial court to order compensation commissioner to file evidence is reached by application for order that trial court so direct, 102 C 702
nonsuit not reviewable unless motion to set aside is denied, 103 C 21, 106 C 13
failure to make special finding under statute not assignable as error in regular appeal, 103 C 41
certain rulings subsequent to final judgment may be included in appeal taken from it, 103 C 265
——as denial of alimony pending the appeal, 103 C 265
——such ruling may be incorporated by amendment to appeal, 103 C 265
——denial of application for alimony in such case not in itself basis of appeal, 103 C 265
where issues found generally for plaintiff, but judgment rendered only on one count, that count alone reviewable, 104 C 257
recitals in memorandum of decision and certificate of election issued, filed by judge, is a declaration by him of his judgment from which appeal lies, 104 C 398
no appeal lies from order for issuance of execution 105 C 424
appeal lies only from judgment on some issue in the case, 105 C 424
general demurrer may be considered on appeal, if so treated by parties and trial court, 107 C 117
where verdict set aside, rulings of court adverse to plaintiff not reviewable, 108 C 680
overruling of demurrer will not be reviewed where court ruled out cause of action demurred to on trial, 109 C 292
judgment by consent will not ordinarily be reviewed, 110 C 208
what the appeal brings up in criminal case tried to three judges, 110 C 549
successful bidder at receivership sale may appeal from order of confirmation, 111 C 605
appeal should not be taken where there is no question affected by a public interest and amount involved is trivial, 111 C 715
action of court in rejecting or discharging juror of its own motion reviewable, 112 C 39
appeal lies from disbarment proceedings both by the attorney and by person or body making complaint, 112 C 273
action of board of equalization in correcting insurance company's return to tax commissioner may be appealed from though statute says it is "conclusive," 113 C 14
appeal does not lie from appointment of receiver of rents in foreclosure, 114 C 351
——defendant may make appointment basis of appeal from judgment of foreclosure, 114 C 351
statute concerning nonsuits and permitting appeal only from denial of motion to set nonsuit aside does not apply to judgments entered upon nonsuits for failure to plead, 116 C 29
——but only when plaintiff shall have produced evidence and rested case, 116 C 29
error in order of court authorizing appraisers in receivership to employ experts, of no avail unless appeal properly taken from order, 116 C 731

——question not open on appeal from order as to compensation to them, 116 C 731
after amendment to complaint, demurrer to original complaint disappears, and ruling on it not reviewable, 117 C 67
voluntary filing of substitute complaint operates as withdrawal of original; thereafter latter can furnish no basis for judgment nor can any previous ruling on it be made subject of appeal, 117 C 230
plaintiff did not pursue remedy by appeal but asserted right of review of errors in condemnation proceedings in action to enjoin defendant from occupying property; *held* plaintiff not entitled in this independent action to review of claimed irregularities in former proceedings, 117 C 230
in absence of erroneous instructions, action of court in returning jury for reconsideration of verdict will not be reviewed, 117 C 428
right of State to take appeal or bring writ of error in criminal case; writ of error from judgment of City Court holding statute unconstitutional, 118 C 373
where action of court in opening judgment was erroneous but not void, plaintiff had right to claim case for trial as if no hearing had been held, 118 C 414
——granting of his motion for new trial recognized this right and afforded no basis for appeal, 118 C 414
where bank had borrowed money and transferred securities to federal corporation, receiver entitled to such advice as necessary to enable him to perform his functions with reference to securing return of pledge though federal corporation not a party, 119 C 115
——hence where trial court held that receiver had no right to securities except by payment of loan, court entertained appeal, 119 C 115
appeal from denial of motion to set aside verdict raises only question of sufficiency of evidence, 119 C 436
——does not raise question of sufficiency of pleadings; in instant case of information, 119 C 436
failure to grant motion to direct verdict not proper ground of appeal, 119 C 459
appeal from denial of motion to set aside directed verdict proper, 119 C 538
motion to restore case struck from docket is like motion to reopen judgment, 120 C 120
——decision upon it is not basis of appeal but it may postpone limitation of time within which appeal from judgment striking case from docket must be taken, 120 C 120
motion to open judgment stating no reason therefor no basis for appeal, 120 C 694
whether appeal lies from refusal of court to open judgment of foreclosure, quaere, 122 C 337
liquor control commission entitled to make finding of issues for plaintiff in judgment basis of appeal without regard to ruling of court on remonstrance, 122 C 522
where no practical benefit could follow from determination of questions sought to be raised by appeal, not incumbent on court to decide them, 122 C 666
ruling by Superior Court upon motion that compensation commissioner be directed to take some necessary step to present issues not basis of appeal, 123 C 102
——but may be assigned as error in appeal taken from final judgment later rendered in case, 123 C 102
——analogy to motion to Supreme Court to compel trial judge to make finding, etc., 123 C 108
where power to condemn for public use is delegated to corporation or individual, its decision is subject to judicial review though there is no express provision therefor and statute therefore not unconstitutional, 124 C 438
——and where statute provided decision of appraisers should be final this did not preclude review by court of their decision as regards question of law, 124 C 438
denial of defendant's motion for acquittal in criminal prosecution at close of State's case and for directed verdict of acquittal at close of evidence, not proper grounds of appeal, 124 C 556
denial of motion for directed verdict is not ground of error, 124 C 569
conclusion of trial court that evidence was recollection refreshed by written memorandum not ordinarily reviewable, 125 C 237
ruling of trial court refusing to extend time to file evidence is not assignable as error but is reviewable on motion to Supreme Court that trial court take proper action, 125 C 492
ruling denying motion for discharge on ground that no evidence sufficient to convict accused had been offered, not ground of error, 125 C 731
unconstitutionality of certain provision of statute not reviewable where appeal was from overruling of demurrer which admitted allegations making this provision unimportant, 127 C 132
where complaint alleged only actual fraud and not constructive fraud for failure to follow statute, and memorandum of decision showed latter not in issue, court did not review it, 127 C 480
where case has been fully tried and decided after demurrer overruled, overruling of the demurrer insufficient ground upon which to sustain appeal, 127 C 544
where action for damages tried to court, award will be disturbed only if so excessive as to be unreasonable, 128 C 302
Supreme Court has no discretionary jurisdic-

tion de penalty, which is within the limits fixed by statute, 128 C 323
no appeal lies to Supreme Court from judgment of City Court in criminal case, 128 C 341
appeal may properly be taken from portion of judgment which is so distinct and severable that, should error be found and case remanded, remaining portion would not be affected, 128 C 401
——in foreclosure by sale, appeal could be taken from part of judgment denying claim for deficiency judgment, apart from approval of sale and other matters, 128 C 401
credibility of witnesses and weight of evidence are for trial court, 129 C 239

§ 5. ——Finality of Judgment

to be final, must put an end to the suit, 21 C 284
——on cross-bill, while original bill is pending, is interlocutory, 21 C 284
neither writ of, nor motion in error, lies on interlocutory judgment, 24 C 390
no new trial for error in ruling on hearing on disclosure, 27 C 518
overruling of demurrer is not a final judgment; pleading over, 48 C 174, 201, 368, 63 C 262, 68 C 504, 71 C 198
appeal can be taken only from a final judgment, 51 C 328, 63 C 576, 96 C 718
does not lie from judgment of Superior Court on plea in abatement, 51 C 329
lies from judgment rejecting report of oyster ground committee, 52 C 6
appeal lies from judgment dismissing plaintiff's application for writ of prohibition; such a judgment is a "final judgment," 61 C 440
appeal will not lie from decision sustaining remonstrance and refusing to accept committee's report, 63 C 576
——if taken, the cause will be erased from docket of Supreme Court, 63 C 576
judgment may be final as to one party, 66 C 37, 97 C 223
——or as to one part of controversy, 69 C 714
judgments determining rights of parties in receivership proceedings, when reviewable, 69 C 709
erasure of case from docket reviewable, 70 C 382, 75 C 541, 84 C 24
where judgment is suspended in a criminal case, no final judgment, 71 C 457
until final judgment has been rendered, no appeal can be taken; decision sustaining demurrer not in itself final judgment though it may foreshadow such a judgment, 74 C 202
judgment appointing receiver not reviewable, 74 C 652
appointing appraisers in condemnation proceedings reviewable, 75 C 237, 325, 85 C 663
judgment on application for admission to the bar, 79 C 59
——in disbarment proceedings, 66 C 585, 80 C 140, 84 C 594, 88 C 447
judgment in interpleader directing payment of fund into court, is final judgment, 80 C 426
judgment dissolving corporation is final as to all parties having opportunity to appear, 81 C 592
no appeal from denial of motion to stay execution as it is not a final judgment, 82 C 517
appeal lies from allowance of motion to erase for want of jurisdiction; but a formal judgment should be entered, 84 C 24
"final judgment" defined, 84 C 31
writs of error lie from final judgment of court only, not from action of a judge in chambers, 88 C 141
judgment finding one a member of a society final for purpose of appeal, 91 C 536
when decision of trial court on a preliminary and collateral question of fact reviewed, 92 C 58, 98 C 446, 99 C 562
order dissolving attachment is a final judgment which may be appealed from, 92 C 682
judgment for injunction to remain in force only a specified time, reviewable, 96 C 265
denial of an order in the nature of an application for a mandamus is a final judgment, 96 C 718
judgment for accounting is final as regards appeal, 102 C 122
appeal lies only from final judgment; not from decision sustaining demurrer to plea in abatement to appeal from City Court, 103 C 762
judgment rendered on a directed verdict is a final judgment, 104 C 447
what is a final judgment, 108 C 19
determination of equitable issues for plaintiff is final judgment, though assessment of damages remains for determination by jury, 108 C 19
decision of Superior Court remanding case to compensation commissioner for a modified award is a final judgment, 108 C 159
what constitutes final judgment, 108 C 304
——test is, are rights of party concluded, 108 C 304
——judgment opening ordered for resale of property in foreclosure at expense of first purchaser and confirming sale, 108 C 304
——attempted appeal from judgment not final should be erased from docket, 108 C 307
——case may remain in court for further proceedings or judgment may affect some of parties only, 108 C 307
decision setting verdict aside as a final judgment permitting appeal, 108 C 680

appeal lies only from final judgment, 109 C 46
——if attempted where none, motion to erase proper; or court may act of its own motion, 109 C 46
——does not lie from sustaining demurrer where some issues are undisposed of, 109 C 46
judgment reforming contract final and separable from judgment which might be rendered on another count claiming damages, 110 C 319
decision on motion to erase for want of jurisdiction is final judgment, 111 C 664
granting motion to open judgment of strict foreclosure after title has become absolute not final judgment permitting appeal, 115 C 623
decision setting aside a verdict is not a final judgment within the general appeal statute, 115 C 678
ruling granting motion to strike from jury list trial of certain issues raised by cross-complaint not such final judgment as affords basis for appeal, 115 C 708
——uniform practice to raise questions presented by such rulings upon appeal from final judgment on merits, 115 C 708
judgment in condemnation proceeding appointing a committee determines power to condemn and necessity and propriety of taking and is a final judgment, 117 C 230
ruling by court on report of committee in condemnation is a final judgment, 117 C 230
——as is also court's refusal to entertain a remonstrance, 117 C 230
memorandum of decision adjudicating claims of one party constitutes final judgment as to him, though issues affecting other parties undisposed of, 118 C 418
judgment striking case from docket is final judgment terminating rights of parties to proceed with action, 120 C 120
granting of motion to restore case to docket not final judgment from which appeal lies, 123 C 166
order dissolving attachment is final judgment as regards appeal, 123 C 380
no appeal lies except from final judgment, 124 C 342
——overruling demurrer not such judgment, 124 C 342
——lies only where judgment thereafter rendered on issues, 124 C 342
any rule or proceeding which disposes of cause and places parties out of court is final, 124 C 639
——also decision concluding right to certain relief may be final, though proceeding does not dispose of entire case but it still remains in court for adjudication of other claims of relief, 124 C 639
——thus appeal lies from order in course of receivership which concludes right of party, and from order appointing appraisers in condemnation, 124 C 642
——judgment disposing of equitable issues may be final, 124 C 642
——many rulings in course of action by which rights are determined are interlocutory and reviewable only upon appeal from judgment later rendered, 124 C 640
——as a ruling on demurrer, 124 C 643
——judgment on petition for new trial, while really ancillary to original action, so far final that appeal may be taken from it, 124 C 644
——and ruling by judge on application for reduction in amount of attachment or its dissolution is appealable, 124 C 645
——so order of court, in action pending before it, in nature of certain prerogative writs, including mandamus, 124 C 645
——not so motions for disclosure or to inspect person of party to action, 124 C 647
rulings on motions to inspect minutes of grand jury in case of defendant indicted by it and in cases of informations brought against defendants as result of report by grand jury, *held* interlocutory and not appealable, 124 C 640
where commissioner opened award but did not pass on merits of claim, and on appeal Superior Court sustained that ruling and remanded case for commissioner to pass on motion to correct award and to complete record by including evidence, there was no final judgment permitting appeal, 126 C 522
denial of motion for trial of issue of fraudulent conveyance, joined in same complaint with foreclosure, after judgment of foreclosure and deficiency judgment rendered, was final judgment from which appeal lay, 126 C 688
appointment of receiver of rents in pending action not ordinarily a final judgment which can be made basis of appeal, 126 C 715
——when order made after judgment but while appeal pending, a claim that order was erroneous may be included in that appeal, 126 C 715
——this can be done by securing additional finding and amending assignments of error, 126 C 715
judgment remanding case to commissioner to hear further evidence, correct finding and enter award was not final one from which appeal would lie, 128 C 284
order dissolving temporary injunction is not final judgment from which appeal lies, 128 C 292
——words "upon final hearing" in statute de continuance of injunction pending appeal refer not to decision on motion but to final judgment, 128 C 294
to permit appeal where effect of interlocutory decree is to do irreparable damage would

involve determination of facts dehors record; no way to do this under our procedure, 128 C 292

——whether decision is final judgment must be determined on face of judgment, 128 C 292

judgment on cross-complaint granting defendant new trial of original action for injunction was final judgment from which appeal lay, 129 C 38

ordinarily denial of motion to reopen judgment is not final judgment within appeal statute, 129 C 374

——but its denial falls within rule that, in proper case, supplemental proceedings following judgment may be assigned as error in appeal from judgment, 129 C 374

whether or not judgment is final is determined on face of record, 129 C 374

——in foreclosure action, denial of motion to open judgment not final judgment from which appeal could be taken, 129 C 374

ruling of court in petition of receiver for advice that it would not in first instance allow claims as preferred not final judgment permitting an appeal, 129 C 464

denial of motion to open judgment in compensation case not final judgment, 129 C 594

§ 6. ——Questions of Fact and of Law

See also § 27, infra

may decide "reasonable notice" if all facts appear on record, 12 C 159, 59 C 543

finding on questions of fact is conclusive, 15 C 538, 22 C 607, 33 C 496

doubtful if it can review a finding as to fraud on given facts, 17 C 27, 58 C 82

has no power to find facts from evidence, 27 C 278, 29 C 499, 35 C 469, 38 C 479

will not review a question of fact decided below, 36 C 542, 39 C 439, 40 C 330, 42 C 361, 50 C 275, 62 C 503

——as finding of negligence, 39 C 439, 45 C 297, 51 C 392, 57 C 425, 60 C 245, 259, 268, 271, 297, 63 C 573, 574

will not review conclusion of court below as to defective sidewalk, when, 37 C 420

will not find or infer facts from certain facts found, 38 C 489, 39 C 439

will review decision as to whether place in question was a "railroad station," 41 C 138

will review question as to whether cattle were illegally impounded, 45 C 163

where finding is an inference of law from the facts it may be reviewed, 55 C 289, 58 C 386, 59 C 197

judgment resting on finding of negligence cannot be disturbed except by reason of some error in law, 57 C 425

in a review of conclusion of law based on facts, the facts may be considered by the Supreme Court, 59 C 197

——but otherwise where the conclusions of the trial court are conclusions of fact, 59 C 197

will review question of reasonable notice to take deposition, 59 C 543

when Supreme Court will not review conclusion of trial court as to negligence, 60 C 239

question of party's actual, open and exclusive possession is one of fact, not reviewable, 62 C 82

finding of trial court as to existence of negligence, contributory negligence, or intent to defraud, presents no question of law for review, 63 C 573

question of power to grant motion to set aside verdict but not advisability of granting, may be reserved, 64 C 73

errors in conclusion of fact can be considered only so far as they relate to the errors of law assigned upon the record, 65 C 76

no appeal lies on ground that evidence fails to support finding, 65 C 99

——or where evidence is conflicting, 64 C 553

reviewability where conclusion is based on all facts of case and standard of care and its exercise are inseparable, 67 C 42, 72 C 37, 74 C 404, 675, 75 C 561

——reviewability where sole question is, did one act as ordinarily prudent man, 85 C 225

will not revise or change questions of pure fact found by trial court from the evidence, 67 C 349, 75 C 140, 302, 77 C 358, 79 C 709, 81 C 84

——nor one where specific facts cannot be set out apart from conclusion of law, 70 C 159

Supreme Court will not review conclusions of fact, 67 C 465, 70 C 103, 428, 71 C 668, 72 C 27, 73 C 410, 75 C 140, 302, 77 C 666, 93 C 317

——where drawn from conflicting evidence, 71 C 95, 405, 442, 462, 72 C 160, 362, 525, 75 C 142, 571, 79 C 709, 81 C 84, 84 C 555, 87 C 1, 88 C 555, 720, 89 C 249, 90 C 199

——or where evidence is not certified, 91 C 260

court will not review facts where purpose is to get new trial, not to correct finding, 67 C 466

——nor where assignment goes to weight of evidence, 68 C 486

——nor where determined on conflicting evidence and in accordance with rules of law, 69 C 404

——though facts are found against greater number of witnesses, 71 C 656

——and United States court follows rule of state court, 12 Wall. 10

ultimate conclusion from special facts is reviewable, 69 C 565, 70 C 439, 71 C 599, 84 C 65

finding as to negligence conclusive, unless wholly unsupported by facts or resulting

from incorrect rule of law, 70 C 54, 72 C 69, 617, 73 C 253, 435, 74 C 356, 562, 77 C 368, 78 C 314
where court cannot set out specific facts apart from conclusions of law all becomes matter of fact, 70 C 159
it is the exclusive province of the trier to determine the weight of evidence and the credibility of witnesses, 70 C 159, 73 C 212, 300, 74 C 726, 75 C 131, 571, 76 C 323, 406, 78 C 709, 79 C 45, 97, 315, 713, 80 C 88, 374, 83 C 386, 84 C 67
different uses of word "fact," 70 C 186
exceptions as to action of court in finding or refusing to find facts from conflicting evidence, of no avail, 70 C 516, 72 C 51
court will not determine facts where all evidence certified, 71 C 600
conclusion not violating any rule of law to the prejudice of the appellant is not reviewable, 72 C 73, 82 C 43
——ultimate conclusion from evidential facts is for trier, unless it is illogical, 69 C 454
if subordinate facts found fail legally or logically to support ultimate fact, court may review conclusion, otherwise not, 72 C 81, 73 C 559, 692, 74 C 423, 546, 75 C 134, 143, 160, 712, 78 C 619, 79 C 586, 80 C 248, 336, 423, 82 C 289, 83 C 612, 84 C 70
——question thus raised is one of law, 69 C 565, 71 C 599, 80 C 596, 84 C 65
——but in absence of subordinate facts, court cannot act, 81 C 532
that evidence opposes conclusion not enough where all evidence not before court, 72 C 173
jurisdiction extends only to correction of errors of law, 73 C 410
failure to treat, as material, facts which might influence decision is error, 73 C 573
finding material fact under misconception as to burden of proof is error, 75 C 187
impropriety of seeking retrial of questions of fact pointed out, 75 C 302, 77 C 368
finding is conclusive where no question of law is involved, 78 C 99, 83 C 436
——and that evidence is not directly contradicted does not make fact undisputed, 72 C 177, 225, 74 C 247, 468, 75 C 298, 76 C 323, 593, 81 C 359
ultimate question is, did court commit error of law as to facts found, 80 C 596
judgment based on conflicting evidence not reviewable, 81 C 84
finding of ultimate fact, without statement of subordinate or evidential facts or legal principles, no ground for redress, 81 C 532
cannot pass on question of negligence unless all the facts appear, 81 C 556
conclusion of fact, not violating any rule of law to prejudice of appellant, not reviewable, 82 C 44
court can review conclusions if subordinate facts fail to support ultimate facts, 82 C 289, 83 C 611, 84 C 70
——that fence was maliciously erected, not reviewable unless subordinate facts are inconsistent, 82 C 289
evidence as constituting subordinate facts, 84 C 64, 90
court will not pass on probative value of testimony, 84 C 67
the conclusions drawn by a jury from a variety of circumstances are questions of fact, 84 C 633
if conclusion results from subordinate facts found which legally or logically fail to support it, court may review it, 85 C 225, 231, 89 C 252, 452
facts are not reviewable unless based on error of law, 86 C 229
will not review weight and credibility of evidence, 87 C 491
ultimate conclusion of trial court stands unless subordinate facts are inconsistent therewith or there is erroneous view of law, 88 C 720, 91 C 260, 93 C 271, 94 C 661
ultimate finding of reasonable care or negligence is reviewable, 89 C 451
where facts were determined by inspection by trial court, no review, 89 C 598
unless finding shows damages unreasonable, cannot say so on appeal, 90 C 1, 35
conclusions reasonably reached on conflicting evidence are final, 93 C 302, 324
futile to attempt to retry facts conclusively found by trial court, 93 C 317, 96 C 695
on appeal from utilities commission this court must reach its conclusion without substituting its judgment for that of the commission, 95 C 26
reasonable inference will not be disturbed, 95 C 40
court may refuse to give weight to certain testimony, as unimportant, 95 C 447
question of fact tried by a committee not retried by court on remonstrance; finding is therefore out of place, 95 C 538
determination of fact from subordinate facts found conclusive unless contrary to or unsupported by them, in conflict with rules of reason or logic or in violation of law, 96 C 12
erroneous conclusion from subordinate facts is error of law, 96 C 273
it is for trial court to determine credit and weight of evidence and find facts, 97 C 40, 308
finding that plaintiff's claims were unfounded in fact is conclusive of case, without regard to rulings of law, 97 C 275
negligence ordinarily a conclusion or inference of fact from subordinate or evidential facts, 97 C 412
——not reviewable unless some rule or precept of law has been violated, 97 C 412

conclusions from subordinate facts are reviewable; will be sustained if legally and logically supported by them, 98 C 352, 371, 755, 99 C 308, 100 C 443, 610, 723, 101 C 310, 102 C 5, 540, 107 C 417, 484, 612, 109 C 577
court can review conclusion from subordinate facts, but must determine issue on facts found, though incomplete, 98 C 375
when inferences and conclusions of fact are final, 99 C 62, 314
conclusions from subordinate facts may be attacked on ground of wrong application of law to certain of them, that is, for error of law, 99 C 355
——as where some one or more are legally inconsistent with conclusion, 99 C 355
——or where in drawing conclusion court has violated some plain rule of reason, 99 C 356
——such conclusions may not be attacked by motion to correct but only as errors of law, 99 C 356
——effect of finding such error on judgment rendered, 99 C 356
in reviewing conclusions court is limited to inquiry whether they are so illogical as to be unjustifiable, 99 C 362
——that is, such as a reasonable man could not reasonably draw, 99 C 362
mixed conclusion of law and fact is reviewable, 99 C 398
conclusions from subordinate facts reviewable without correction of finding, 99 C 556, 100 C 446, 103 C 157
finding conclusive when dependent on weight of evidence or credibility of witnesses, 100 C 189, 101 C 422, 102 C 57, 331, 529, 103 C 624, 105 C 73, 729, 107 C 484, 108 C 19, 109 C 506, 113 C 258, 114 C 172
no ground of error that court did not attach as much weight to certain testimony as appellant thought it should, 101 C 422
conclusions are reviewable not on basis of evidence, but of subordinate facts found, 102 C 540, 609, 103 C 279
a conclusion whether so-called or not can only be attacked as legally or logically inconsistent with subordinate fact, 103 C 157.
court has no jurisdiction to retry facts or weigh evidence, 104 C 36
Supreme Court cannot weigh and find facts; therefore cannot entertain motion for allowance to defend in divorce action, 104 C 412
conclusion drawn directly from evidence must stand if reasonably reached, 107 C 1
conclusions from subordinate facts always reviewable, for error therein is one of law and not of fact, 107 C 417
——when such a conclusion will be deemed so erroneous as to justify review stated, 107 C 417
Supreme Court cannot retry the facts; that is exclusive function of trial court, 108 C 19
conclusions of mixed law and fact are conclusive, 108 C 732
——fact not found without evidence if even slight evidence supports it, 109 C 348
conclusion drawn from subordinate facts reviewable on appeal, 109 C 722
Supreme Court is constituted to correct errors of law and cannot determine pure questions of fact, 110 C 633
errors of law only reviewable, 111 C 72
even though conclusion (here contributory negligence) be solely one of fact it should not stand if court can see from record that in drawing it court violated some rule of law, 116 C 511
——to determine what standard of care court applied, this court may consult memorandum of decision, 116 C 511
province of court to determine facts where evidence is conflicting, 119 C 206
where there is sufficient basis in evidence to support conclusion of trial court, Supreme Court cannot substitute its own judgment, 120 C 161
finding or conclusion cannot be held erroneous merely because based on testimony or opinion of one witness in opposition to several others, 120 C 608
province of trial court to weigh evidence and determine what part of testimony it would believe, 120 C 677
credibility of witnesses cannot be reviewed, 121 C 92
where evidence is conflicting it is for trial court to find the fact, 121 C 144
conclusions conclusive unless legally or illogically inconsistent with subordinate facts, or involve application of some erroneous rule of law, 121 C 385
Liquor Control Act; Supreme Court cannot find facts nor in first instance draw conclusions of fact from primary facts found but can only review such findings to see if they are legally and logically found, 121 C 696
——and where state referee did not make finding sufficient to enable trial court to enter judgment, Supreme Court declined to entertain reservation, 121 C 697
Supreme Court will not set aside verdict on ground that it was against weight of evidence, 123 C 1
where medical testimony conflicts, conclusion of trial court must stand, 124 C 241
question whether highway defective is generally one of fact, 124 C 283
——but determination of whether facts found warrant conclusion reached therefrom open on appeal, 124 C 283
question whether, in case where doctrine of res ipsa loquitur involved, jury could rea-

sonably reach conclusion of negligence, reviewable, 124 C 326

conclusion cannot be disturbed unless it involves application of some erroneous rule of law material to case or has been unreasonably drawn from facts, 125 C 62

whether or not finding reasonably supports conclusion, 127 C 241

conclusion of court upon facts found by it can always be reviewed by appellate court, 128 C 460

when question of legal liability is purely that of prudent conduct and no violation of law by court is apparent from record, its conclusion is final, 129 C 491

§ 7. ——Discretionary Rulings

§ 7(1). General Rule

will not review matters of discretion, 55 C 342

even where court has discretion, it will not be sustained if in making a ruling it deprives a party of a right, 58 C 66

will interfere with exercise of discretion only for grave reasons: fraud, corruption, improper motives, etc.; difference of opinion or judgment is never sufficient ground, 58 C 457, 116 C 43

rulings made in discretion of court not ordinarily reviewable, 80 C 149, 314

——but whether matter is one involving discretion is, 68 C 39, 79 C 46

——and so is conclusion reached on theory that matter was not in discretion, when it was, 68 C 39

——it may be error for court to refuse to exercise a discretionary power which it has, 68 C 46, 73 C 17

action of administrative body not reviewed unless illegal abuse of power, 84 C 26

only when discretion of trial court is abused is its action set aside, 84 C 518

discretion of court in conduct of trial ordinarily not reviewable, 85 C 112

will not disturb ruling of trial court unless court acted unreasonably, unfairly or some improper application of rule of law was involved, 96 C 259, 103 C 479, 112 C 267, 121 C 681

nature of judicial discretion; abuse, 98 C 382

control of proceedings in court room by trial judge, 100 C 69

Supreme Court has power to review rulings on matters not committed to sole discretion of trial court, 100 C 297

trial court exercises legal discretion; action not disturbed unless discretion clearly abused, 108 C 163

Supreme Court will not disturb ruling within trial court's discretion unless that court acted unreasonably, unfairly or some improper application of rule of law was involved, 112 C 267, 121 C 681

differences in opinion or judgment are never ground for interference with discretionary powers, 116 C 43

decisions of administrative boards, 126 C 237

§ 7(2). Miscellaneous Rulings

the granting or refusing of a new trial, being discretionary, is not a subject of error, K 43, 1 R 290, 6 C 60, 28 C 465, 37 C 566

allowance or disallowance of costs is not a subject of error, when, 10 C 124

refusal to tax costs on probate appeal for either party *held* no error, 22 C 271

will not revise action of a court of equity as to allowance of costs, 28 C 472

may review decision of Superior Court on habeas corpus, 33 C 321

the granting or refusing a mandamus is matter of discretion, not reviewable, 59 C 217

question of reasonable notice to take deposition is reviewable, 59 C 543

disbarment proceedings, though dependent on discretion, are reviewable, 66 C 585, 80 C 149, 84 C 594, 88 C 447

taxing costs to garnishee in action against him, 67 C 257

——in mandamus, 68 C 220

ordering recount of ballots, 75 C 48

petition for new trial on ground of newly discovered evidence, 75 C 576, 77 C 15

——or misconduct of juror, 84 C 518, 87 C 363

refusal of bail after judgment in habeas corpus, 78 C 155

action as to temporary injunction, 80 C 426

order modifying decree as to custody of children in divorce action, 83 C 479

——fixing amount of alimony, 85 C 478

not error not to fix an exact amount for each item that enters into a general sum for damages, 84 C 202

prior to appeal issuing of mittimus within discretion of court, 84 C 567

refusal to grant a third stay of execution pending appeal not an abuse of discretion, 84 C 567

verdict for excessive damages in slander set aside if discretion of jury is abused, 85 C 23

improper remarks of counsel not reviewed as matter of law, 85 C 112

in allotting alimony court's discretion not interfered with, 85 C 478

discretionary to order remonstrance to committee's report to be more specific, 87 C 242

order authorizing receiver to compromise claim discretionary; no review unless it amounts to abuse of discretion, 88 C 571

domicil in divorce action in another State reviewable, 88 C 689

action of court in disbarment proceedings will not ordinarily be disturbed, 90 C 440
——so, on application for new trial for newly discovered evidence, 91 C 25
time for presenting claim in receivership discretionary; reviewed on abuse only, 91 C 359
fact that charter provides that report of appraisers in condemnation may be accepted or rejected "at the discretion of the court" does not prevent appeal, 91 C 639
order of court for joint trial of two accused jointly indicted, 92 C 58
ruling of trial court upon motion of accused in criminal case that evidence be procured and printed in appeal record at expense of State, 95 C 451
decision as to new trial for newly discovered evidence reviewable when, 96 C 254
——will only be reviewed where it appears court has abused its discretion, refused to exercise the power in a proper case or misjudged the limits of its power, 96 C 254
failure of City Court to call in stenographer, 98 C 283
reasonable compensation of executors, 98 C 375
interlocutory rulings in naturalization case, 98 C 435
amount of award of alimony, 99 C 20
decree as to custody of child in habeas corpus or divorce action, 99 C 155
rulings on motions for change of venue or separate trials of persons accused of crime, 100 C 207
admission to bail pending appeal from dismissal of habeas corpus, 100 C 296
refusal to enjoin violation of building restriction, 100 C 652
extent of penalty imposed for crime, within maximum fixed by statute, 101 C 9
specific performance of real estate contract, 101 C 219
taxation of costs upon appeal from probate, 101 C 401
withdrawal by accused of election to be tried to the court, 102 C 46
ordering compensation commissioner to certify evidence, 102 C 702
inquiry into collateral matters to impeach credibility, 102 C 708
injunctive relief under National Prohibition Act, 103 C 7
permitting State to reopen criminal case for further testimony, 103 C 138
extent of punishment of accused, 103 C 138
injunction against nonresident, 104 C 206
allowance for attorney's fee to employer under Compensation Act within reasonable discretion of trial court; includes power to refuse any fee, 104 C 504
ruling on motion for new trial, 106 C 2
reopening judgment at same term, only reviewable for abuse of discretion, 107 C 167, 109 C 46, 112 C 674
decision on petition to remove fiduciary; abuse of discretion must clearly appear, 107 C 535
appointment of receiver, 111 C 497
refusal to disbar attorney for unprofessional misconduct, 112 C 263
discretion of compensation commissioner as to opening award reviewed as not reasonably exercised, 112 C 333
review of action of compensation commissioner in reopening award upon the facts of case, 113 C 170, 262
issuance of injunction, 113 C 636
grant of petition for new trial upon ground of newly discovered evidence, 114 C 102, 116 C 649
regulation of amount of alimony payable under decree matter of discretion with court; will not be interfered with unless abused, 116 C 632
granting or denial of motion to recommit to referee for additional findings within discretion of court reviewable only for abuse, 117 C 138
denial of petition for new trial on ground of newly discovered evidence, 117 C 214
in compensation case where finding has been so corrected as to destroy basis of award, whether final decision should be rendered or further proceedings had, 118 C 29
disallowance of amendment to appeal from zoning board of appeals within discretion of court, 118 C 174
granting or denial of motion to reopen divorce before state referee to receive additional evidence, 118 C 291
determination by trial court that newly discovered evidence would probably not bring about a different result, 118 C 444
ruling on motion for new trial for newly discovered evidence rests largely within discretion of court, reviewable only in case of abuse, 119 C 170
whether commissioner shall open compensation award for newly discovered evidence rests largely in his discretion, 119 C 522
discretion exercised by court in fixing law day is legal discretion, 120 C 211, 384
——exercise will not be interfered with except in case of manifest abuse, 120 C 211
decision of zoning board of appeals, 120 C 449
refusal to extend time for filing motion to set aside verdict, 121 C 361
amount to be awarded as alimony rests in discretion of court, 121 C 498
opening of judgment of foreclosure is within discretion of court, 122 C 334
change of venue, 122 C 530
petition for custody of child addressed to court's discretion, 122 C 603

physical examination of complainant in rape case, 122 C 604
opening foreclosure judgment and permitting withdrawal of action in view of reorganization of owner of equity, 123 C 9
of liquor control commission, 123 C 31
opening or vacating judgment during term is within discretion of court, 123 C 248
trial court has discretion in proceeding with case regularly assigned for trial, when counsel fails to appear without reasonable cause, 123 C 487
court has discretion as to opening a default judgment unless based on pure error of law, 123 C 487
whether alimony shall be awarded, 123 C 564
whether Superior Court on appeal from disallowance of probate account should settle account, matter of discretion reviewable only to see if it was reasonably exercised, 124 C 216
denial of motion for counsel fees, alimony and support of minor child not reviewable where abuse of discretion does not appear, 124 C 445
in absence of statute, matter of compensation of trustee within discretion of court, 124 C 472
no abuse of discretion in refusing to reopen judgment to permit introduction of testimony contradicting evidence at trial, 124 C 539
denial of bill of particulars in criminal case, 124 C 554
order by Superior Court to compensation commissioner to act on motion to correct, 125 C 22
sentence imposed in criminal case, 125 C 211
discretion of trial court in denying petition for new trial for newly discovered evidence reviewable only for abuse, 125 C 289
allowance to wife for expenses of appeal to Supreme Court reviewable only to determine whether court abused its discretion, 125 C 467
costs and allowance in interpleader, 125 C 581
granting or denial of motion for change of venue rests in discretion of trial court, 126 C 61
continuance, 126 C 257
allowance of attorneys' fees in receivership for services in defending corporation in receivership action, 127 C 35
it is error for court to rule that it is without power to make certain decree when matter was in its discretion, 127 C 515
inspection of testimony taken before grand jury, 127 C 544
where action for damages tried to court, award will be disturbed only if so excessive as to be unreasonable, 128 C 302
decision suspending attorney from practice not reviewed unless it appears he has been deprived of substantial right; court has wide discretion, 128 C 419
whether Probate Court will open ex parte decree rests in its legal discretion, 129 C 316
denial of motion to reopen judgment for damages for plaintiff's support on ground of admissions made in divorce action within discretion of court, which was not abused, 129 C 347

§ 7(3). Rulings during Trial; Motions; Amendments

rulings allowing or disallowing amendments not ordinarily reviewable, 64 C 565, 69 C 555, 71 C 623, 74 C 62, 126, 75 C 45, 308, 76 C 680, 82 C 479, 83 C 417, 85 C 271, 91 C 448, 98 C 206, 101 C 545, 103 C 491, 671, 104 C 297, 106 C 220, 108 C 622, 115 C 683
rulings on motion for continuance, 69 C 186, 75 C 308, 314, 78 C 654, 79 C 380, 81 C 474, 108 C 173
dismissing jury because of improper argument of counsel, 72 C 252, 74 C 638
——returning jury for further consideration, 74 C 584
——instructing jury as to duty to strive to agree, 80 C 245
——directing jury to return general verdict where same crime is charged in different counts, 74 C 531
refusal to allow proper amendment on the ground that the court has no power to do so, reviewable; such action is not exercise of discretion, 73 C 1, 76 C 273
granting nonsuit for failure to prosecute, 75 C 314
refusing nonsuit, 79 C 266, 379, 80 C 299, 98 C 248, 372
refusal to allow amendment because court believed it would be of no value, reviewable, 79 C 458
right of court to comment ordinarily matter of discretion, 79 C 663, 80 C 88, 538, 82 C 518, 83 C 597, 85 C 459, 88 C 93, 91 C 388
denial of motion to consolidate cases not reviewed except for abuse of discretion, 82 C 2
refusal to submit interrogatories not abuse of discretion, 83 C 183
granting motion to make more specific, discretionary; reviewed when abused, 85 C 512, 87 C 241
motion for stay of proceedings, 91 C 553
postponement within court's discretion, not ordinarily reviewed, 92 C 658
finding that juror is not disqualified by belief as to guilt of accused formed from newspapers, 97 C 322
failure to hold hearing on motion to extend time in which to take appeal, 97 C 414
in homicide case refusal to compel election between counts, 98 C 461

——refusal to order change of venue, 98 C 461
——twice returning jury for further consideration, 98 C 462
——examination of witnesses by judge, 98 C 469
returning jury for further consideration of verdict not reviewable unless it involves abuse of discretion, 99 C 417, 106 C 728, 108 C 549
directing verdict for defendant in action for rent where issue of fact involved but lease was void, 102 C 346
permitting jury to go home after charge and before deliberation, 103 C 272
ordering plaintiff to submit to physical examination, 103 C 272
ruling on motion for change of venue, 103 C 453
drawing and distribution of jurors, 103 C 453
permitting accused to admit certain facts in murder case, 103 C 455
denial of wife's motion for allowance to prosecute appeal in divorce action, 104 C 152
determination of challenge to array for alleged unreasonable distribution of jurors, 105 C 326
submission of interrogatories, 105 C 572, 107 C 242, 108 C 622
in dealing with improper argument to jury, 106 C 119
continuing trial and holding jury pending illness of juror in criminal proceeding, 106 C 701
trial court exercises large discretion in refusing to grant mistrial for improper remarks of counsel, 108 C 191
in absence of finding it must be assumed that trial court did not abuse discretion in setting verdict aside for improper argument, 108 C 285
oral requests to charge may be refused in reasonable exercise of discretion, 108 C 544
court may properly express its opinion in commenting upon evidence to jury and its action will not be reviewed in absence of an abuse of discretion, 109 C 91
granting change of venue, 109 C 571
change of venue in criminal case, 110 C 55
excuse or discharge of juror by court of its own motion, 112 C 57
allowance of amendment after evidence was in, 113 C 402
permitting amendment to plea in abatement to insert prayer for relief, 113 C 771
to decline to submit interrogatories where only one cause of action is asserted in discretion of court, 114 C 56
granting or denying motion for production of documents by adversary during trial, 114 C 165
allowance of amendment to pleadings, 114 C 614
——but allowance is reviewable for abuse, 114 C 614
——error to refuse amendment because court deemed party ought to accept settlement and because other cases would be delayed, 114 C 614
no abuse of discretion in court's allowing amendment after close of evidence alleging wrongful conduct on part of party added as defendant, 115 C 499
court acted within discretion in refusing to set aside verdict because of newspaper article stating defendant was insured, and in refraining to comment thereon in charge, 115 C 563
extent to which trial court will permit motion to set verdict aside as against evidence to be argued, rests in its discretion, reviewable only for abuse, 115 C 672
allowance of amendment after conclusion of trial to conform to proof, 116 C 314
discretion of trial court to refuse amendment after trial, 117 C 428
discretion in allowing production and inspection of documents at trial not reviewable unless abused, 118 C 276
granting continuance because of absence of defendant, 118 C 537
allowance of amendment changing date as to charge of adultery within discretion of court, 120 C 161
action of court in permitting amendments is discretionary and can be reviewed only when discretion abused, 120 C 264
——so to cure variance, 120 C 264
whether court will grant mistrial for improper statement of counsel rests in its discretion subject to review, 120 C 494
refusal of court to strike out amendment to complaint and to grant defendant's motion for more specific statement in discretion of court, which was not unfairly exercised, 121 C 77
discretion of court to direct defendant to elect as to defenses where to pursue both would greatly confuse and complicate issues, 122 C 185
amendment of pleadings, 122 C 363
interrogatories in equitable action, 122 C 561
submission of issues to jury in equitable action, 122 C 561
allowing more than hour fixed by statute for argument, 122 C 611
trial court has broad discretion in dealing with improper argument, 123 C 51
allowance of amendment during trial, setting up special defense, within discretion of court, 123 C 88
action in permitting or disallowing amendments is discretionary and can be reviewed only when discretion abused, 124 C 10
denial of motion for mistrial for improper argument by state's attorney, 124 C 556

amendment to pleadings during trial, 125 C 80
denial of motion to withdraw cross-complaint within discretion of trial court, 125 C 472
interrogatories, 126 C 483
whether court will grant new trial conditioned upon failure to file remittitur or will set aside verdict unconditionally, rests in its discretion, 126 C 569
extent of examination of juror as to qualifications, 126 C 574
court acted within its discretion in refusing to hold tax collector in contempt for failing to bring rate books into court in response to a subpoena duces tecum under circumstances, 128 C 273
resubmission of case to jury not abuse of discretion, 128 C 378
whether or not report of committee should be recommitted, 128 C 443, 129 C 299
allowance of amendments to pleadings, 129 C 391
action of court in allowing plaintiffs to withdraw count after they had put in case, discretionary, 129 C 472
court has wide discretion as to submitting interrogatories de subordinate facts, 129 C 688

§ 7(4). Evidential Matters

exercise of discretion in order and time of admitting evidence is no ground of error, 11 C 158
error cannot be predicated upon exercise of discretionary powers, 36 C 460
——as permitting cross-examination outside of matter inquired into on direct, 36 C 460
rulings as to order of admitting testimony, 66 C 80, 168, 77 C 394, 398, 83 C 429, 88 C 177
——as to relevancy or remoteness, 77 C 267, 78 C 29, 66, 79 C 664, 80 C 19
——calling attention of witness to contradictory statements out of court, 82 C 448
——permitting witness to explain answers showing interest or tending to discredit, 66 C 175
——limiting cross-examination, 74 C 198, 374, 80 C 531, 82 C 454, 84 C 152
preliminary proof as to admission of evidence, 69 C 124, 70 C 516, 71 C 313, 73 C 363, 588, 80 C 525
——examining one's own witness as to contradictory statements in case of surprise, 74 C 431
——permitting cross-examination of one's own witness as hostile, 65 C 93
scope of redirect examination, 73 C 471, 77 C 201, 82 C 280, 454
whether court exercised reasonable discretion in admitting a preliminary question of identity is open to review, 84 C 249
order of admission of testimony is discretionary, 88 C 178, 99 C 200, 101 C 406, 106 C 302, 107 C 91, 116 C 144
excluding question put to expert on ground of lack of qualification, 91 C 431
rulings on evidence in discretion of court, even if erroneous, not ground for new trial, 92 C 576
where court excludes evidence as irrelevant, question whether if relevant, court in its discretion should have excluded it as remote not considered, 93 C 81
error in ruling on preliminary question on evidence rarely reversible, 95 C 521
holding of court that memoranda used to refresh recollection of witness or one of past recollection is not intended to get in evidence irregularly, 96 C 274
——and, in case of former, that memory is actually refreshed, 96 C 279
ruling as to whether expert witness is qualified to give an opinion, 96 C 583, 97 C 667, 114 C 370
limiting cross-examination where direct evidence has not dealt directly with its subject matter, 97 C 45
limiting cross-examination where same question is repeatedly asked, 97 C 514
comment upon the evidence, 98 C 540, 99 C 482, 107 C 18, 109 C 87, 114 C 475, 115 C 344, 116 C 471
permitting state's attorney to cross-examine his own witness, 99 C 104
whether court should in charge comment on declaration of decedent offered in evidence, 99 C 475
limitation of cross-examination may be such an abuse of discretion as to be error, 99 C 552
whether evidence is too remote, 99 C 582
admitting sketch in evidence as sufficiently accurate reviewable only in very plain case of abuse of discretion, 100 C 245
scope of evidence on rebuttal, 100 C 281
rejection of deposition, 100 C 381
admitting deposition where party testifying read into it statement he had prepared, 100 C 381
whether witness must first give means of knowledge before testifying, 100 C 547
testimonial competency of children, 100 C 574
excluding documents offered on rebuttal which were really part of plaintiff's case in chief, 101 C 416
accuracy of photographs, 101 C 545
admission of leading questions, 102 C 162
in admitting evidence to affect credibility, discretion goes to extent and period covered, not to relevancy, 102 C 708
in criminal case, permitting further evidence after case committed to jury, 103 C 479
——test of abuse of discretion is whether ruling operated unfairly to disadvantage of one party, 103 C 479
discretion of trial court in ordering production and permitting inspection of documentary evidence, 104 C 508

trial court exercises legal discretion in ruling upon qualifications of witness, 104 C 585
preliminary ruling on admissibility of photograph is within reasonable discretion of trial court, 105 C 392
admissibility of statements as part of res gestae, 105 C 429, 476
whether expert may give opinion upon testimony as he heard it in court, or on hypothetical question, is within trier's discretion, 105 C 436
discretion of trial court to permit expert to give opinion on the testimony as he heard it, 106 C 86
discretion of trial court to admit evidence upon counsel's promise to connect it up, 106 C 99
admitting evidence subject to promise to show condition unchanged from that when accident occurred, 106 C 303
——so admission of photograph to show general conditions, 106 C 303
ruling on leading questions is discretionary, 106 C 729
comments on evidence and expression of opinion by judge in charge, 107 C 18
exclusion of unnecessarily repetitious question is discretionary, 107 C 91
discretion to exclude evidence of conveyance of land nine months after suit brought, offered to show consciousness of liability, 107 C 158
admitting oral evidence as to contents of records remotely involved and difficult to produce, 108 C 81
examination of witness by judge is discretionary, 108 C 454
refusal of trial court to have part of evidence read to jury at their request, 109 C 394
exclusion of evidence as merely cumulative, 110 C 49
ruling that evidence too remote in time, 110 C 55
——permitting evidence on rebuttal which was discovered during trial, 110 C 55
admission of confession of accused as freely and fairly made, 110 C 563
in admitting rough sketch of locality made by witness, 112 C 295
discretion to permit party to withdraw judicial admission made as witness, 113 C 30
admitting or rejecting evidence of cost of article having no market value, as evidence of value, 113 C 97
limiting evidence as to resources of town to deal with ice and snow on its sidewalks, 113 C 181
exclusion of opinion of witness based on "facts as testified to," 113 C 355
permitting party surprised by adverse testimony of his own witness to examine him as to contrary statements out of court, is not reviewable, 113 C 574
admitting evidence of condition of roof some months after injury alleged to be due to it, 114 C 451
exclusion of evidence as remote within discretion of court, reversible only for clear abuse, 114 C 571
reopening case and permitting party to bring brakes into court and offer expert evidence as to them, within discretion of court, 115 C 201
admitting on rebuttal evidence not strictly rebuttal evidence, 115 C 295
excluding on rebuttal question, answer to which would not have rebutted anything elicited on cross-examination, 115 C 518
whether child of tender years is qualified as witness is in discretion of court; ruling will not be disturbed unless in clear case of abuse or error in law, 115 C 672
——method of examination also in discretion of court, 115 C 672
no abuse of court's discretion to allow jury to remain while child is being examined as to competency as witness, 115 C 672
discretionary with court to permit cross-examination of witness as to facts inconsistent with his testimony to test his credibility, 116 C 593
whether photograph is sufficiently accurate to be admissible is preliminary question for court and its action can rarely be reviewed, 118 C 307
conclusion that memorandum used by witness does stimulate his recollection, 118 C 527
admission of pan of pebbles, testified to as being similar to those on walk on which plaintiff fell, proper exercise of court's discretion, 121 C 331
whether witness offered as expert has qualified, within discretion of trial court, 121 C 366
refusal of court to open case during arguments to permit defendant to introduce evidence to discredit testimony of plaintiff, within its discretion, 121 C 480
while exclusion of confession is exercise of court's discretion, question of duty is involved and its action is reviewable on appeal, 121 C 681
admitting photograph in evidence, 122 C 610
admissibility of sketch made by officer showing location of cars and marks after accident, if contradictory to oral testimony, rested in discretion of court, 123 C 50
question on cross-examination, 125 C 43
remoteness of evidence of sales of other similar properties in determining market value, 125 C 172
while cross-examination to affect credibility is largely discretionary as to its extent and period covered, question of relevancy is not, 125 C 321
denial of motion to reopen case after evidence and arguments closed, to introduce evidence

on principal issue, within discretion of court, 125 C 399
where admissibility of evidence depends on preliminary issue of fact, decision of trial court not reviewable unless clearly erroneous, 125 C 572
qualification of expert, 126 C 224
whether court will permit further evidence after close of testimony in case is matter in its discretion, 126 C 240
permitting leading questions on redirect examination, 126 C 363
having notes of stenographer read to jury or submitting copies to them, 126 C 484
defendant on cross-examination having denied that he committed perjury in a certain trial, subsequent further cross-examination on matter did not exceed court's discretion, 126 C 557
within court's discretion to exclude question of expert predicated on "testimony you have just heard," 126 C 664
order of proof, 127 C 546
admission of voluminous records as a whole, though they included irrelevant items, 127 C 547
where document is produced in court upon order, trial court has discretion to permit or refuse inspection by opposing counsel, 127 C 602
permitting defendant to resume witness stand after completion of testimony and during argument of counsel, matter of discretion, 128 C 138
difficult to claim error in admission of opinion of expert because of wide discretion allowed trial court, 129 C 687

§ 8. Necessity of Raising Point in Trial Court

§ 9. ——In General

court will hear only the precise objections raised below, 7 C 408, 9 C 31, 10 C 268, 507, 12 C 333, 16 C 328, 24 C 483, 511, 28 C 573, 46 C 37
new trial not granted on objection to charge not made below, 15 C 13, 115, 225
objection to course below must be made then and there, 17 C 382
no points not made below can be assigned as error, 36 C 115
the finding must show that the points were raised; finding may be so amended by the judge, though time for filing motion has expired, 40 C 90
Supreme Court will not consider questions not raised below, 47 C 568
Supreme Court will not decide legal question raised after court's charge to jury, 49 C 468
questions raised on appeal must appear to have been decided adversely below, 54 C 82, 60 C 244
——other questions may not be considered though not objected to by opposing counsel in Supreme Court, 54 C 82
record must show that question was distinctly made on the trial below, 54 C 592
it was not design of statute to deprive the Supreme Court of the power to review errors when it necessarily appears that issue was decided below, 57 C 524
——statute has no reference to error of trial court in applying law to the facts as found, 57 C 524, 60 C 224
Supreme Court may consider a claim not so raised, 65 C 315, 71 C 98, 76 C 497, 651, 77 C 382
——as where matter is of public moment, 85 C 399
——or it is necessarily involved in judgment, 67 C 372, 75 C 515
——or goes to jurisdiction, 76 C 411
——or where statute was not brought to the attention of the court, 72 C 157
——so where complaint is defective on its face, failure of demurrer specifically to point out defect was overlooked, 82 C 367, but see 70 C 318
——so the court considered claim not made below but fully argued by both parties, 85 C 155
——so it construed injunction as to which no question was raised, 85 C 195
claim must have been distinctly made in trial court, 66 C 247, 70 C 125, 75 C 335, 369, 78 C 13, 81 C 143, 351, 533, 82 C 413, 84 C 702, 85 C 394, 86 C 319, 87 C 70, 88 C 110, 89 C 549, 592, 90 C 200, 242, 670, 91 C 411, 421, 600, 93 C 367, 392, 95 C 448, 521
——so claims not embodied in request for finding will not be considered, 80 C 596, 85 C 572, 86 C 453, 560, 88 C 110
——and if claim not made below, inadequacy of finding as to it is immaterial, 88 C 8
question must be included in original statement of question if appellant desires to have it reviewed, 81 C 84
trial judge must first be asked to make correction of finding, 81 C 310
matter not in issue and not settled by judgment will be disregarded, 81 C 442
claims inconsistent with those made below not considered, 82 C 653
on appeal issues framed by pleading in trial court accepted, 83 C 666
assignments of error limited to claims of law made in trial court, 84 C 648, 85 C 394
question must be raised at the trial and embodied in request for finding, 85 C 567
if complaint makes no claim for damages from a particular cause, and no evidence is offered on that point, there is no ground for a new trial on that ground, 86 C 551
request for charge to jury should clearly point out claim of party, 87 C 172
where claim not clearly made, absence of find-

ing of facts to support it will not cause court to reverse judgment, 88 C 8, 89 C 336
claims presented in brief for first time not entitled to consideration, 88 C 52
question of law not raised in assignments of error not reviewable; must be raised at trial and must be directly and specifically stated in appeal, 88 C 109
alleged errors confined only to those raised in trial court and decided adversely to appellant and specifically assigned, 89 C 549
if fact is admitted in pleadings it cannot be attacked, 89 C 616
claims not made on trial nor assigned not considered on appeal, 90 C 670, 91 C 411, 421
new trial not ordered on grounds not raised unless substantial injustice was done, 93 C 691
after verdict and judgment complaint cannot be attacked as too general, 94 C 257, 303
on appeal, cannot take advantage of lack of averment if not objected to below by demurrer or objection to evidence, or made assignment of error, 94 C 276
grounds of objection not urged in trial court not available on appeal, 94 C 481, 95 C 534
claim of law must be made in trial court, 95 C 448, 521
claims not made in trial court will not be considered on appeal, 98 C 2, 78, 209, 101 C 470, 103 C 520, 105 C 252, 106 C 119, 302, 701, 109 C 292, 111 C 72, 116 C 9, 730
claims not in issue under pleadings are not available to appellant, 98 C 576
claim must be raised on trial and finding may be corrected to show it was, 99 C 122
where trial court states claim of law in draft-finding was not made on trial it will be disregarded, 100 C 470
a motion, not passed on by trial court, offers no basis for appeal, 100 C 728
technical defect in criminal information must be attacked in trial court, 101 C 8
court will not consider claims not made before referee who heard case, 101 C 658
objection to form of counterclaim must be raised in trial court, 102 C 152
nonsuit not reviewable unless motion to set aside denied, 103 C 21
point must be distinctly raised in trial court and decided adversely to appellant, 103 C 279, 520
in jury case question not raised in trial court by pleading or request to charge disregarded, 103 C 521
claim that pleadings do not support judgment, how to be raised, 104 C 366
claims not made in pleadings or on trial cannot be advanced upon appeal, 105 C 252
only claims of law made in trial court and specifically assigned as error may be reviewed, 105 C 415
duty of Supreme Court to dismiss action for want of jurisdiction whenever it appears, whether question raised or not, 105 C 502
claims not put in issue by pleadings or raised below not entitled to consideration, 106 C 120
where party frames pleadings and tries case on certain theory he cannot complain of failure of court to submit another theory to jury, 106 C 153
objection not made on trial not available on appeal, 106 C 302
questions of law not raised in the trial court will not be considered on appeal, except in rare instance, 106 C 511
gross defects in pleading cannot be overlooked even if so treated by parties and trial court, 107 C 351
question of constitutionality of law not raised in trial court will not be decided, 109 C 588, 111 C 72, 88, 188, 209, 362, 114 C 71
claim that certain facts were not proven not considered on appeal where not made on trial, 110 C 4
question of constitutionality of statute cannot be raised for first time in Supreme Court where action and appeal to Superior Court brought under it, 110 C 80
court does not ordinarily consider errors not raised on trial, 111 C 72
——where it does, it is because it is required in interest of general welfare or justice between individuals, 111 C 72
——court refused to consider constitutionality of guest statute which was not rasied on trial, 111 C 72
——but was raised on appeal because of intervening decision of Superior Court, 111 C 72
constitutionality of guest statute not considered when raised for first time in motion to reargue motion to set aside verdict, 111 C 209
unconstitutionality of statute raised in argument and in additional reasons of appeal will be considered by Supreme Court, 112 C 139
questions of declaratory judgment not considered when not presented at trial, 112 C 543
plaintiff's mistake as to nature of his claim in trial court disregarded, where injustice would otherwise result, 113 C 449
where court decided case upon issue not raised by pleadings or contested on trial, appellant permitted to take advantage of error, 113 C 779
where refusal to charge was first asserted in assignments of error, court will not review it, 114 C 62
claims made in draft-finding not brought orally to the attention of trial court and not contained in finding as claims of law will not be considered, 115 C 452
court would hesitate to find error in charge for omission where claim was not made in request to charge, 116 C 48

claim not considered where not raised in court below or in assignments of error, 118 C 225
where no request to charge, Supreme Court need not take cognizance of claim of omission in charge, 118 C 554
court will not entertain questions not distinctly raised at trial, 118 C 616
claim first made in request for finding as one of questions appellant desires reviewed, not considered, 118 C 635
claims first appearing in briefs not considered, 118 C 715
court justified in omitting to insert in finding in jury case claims made on evidence offered which were not presented to it at the trial and not involved in issues appearing on face of record, 119 C 63
——in such case party may place evidence on record by having it printed, but unless claim was made on trial he may need to resort to rectification to bring matter before Supreme Court, 119 C 63
ordinarily will not consider claims of law not made at trial, 119 C 297
question not raised in trial court by request to charge or otherwise, 119 C 441
assignments of errors alleged to be apparent on face of record, attempting to present questions not raised upon trial, not entitled to be entertained on appeal, 120 C 223
claims made in argument by brief were made within course of trial, and considered by Supreme Court, 121 C 237
although claim not made in trial court it was regarded where apparently provision was included in judgment without appellant having any reason to anticipate it, and error was apparent and of a nature which should not be overlooked, 121 C 290
failure of court to charge on essential principle was reversible error though appellant did not raise point at trial, 121 C 331
where appeal to Supreme Court is presented upon ground different from that upon which case was tried, court under no obligation to consider it, 121 C 354
objection to charge not considered where there was nothing in claims of proof to suggest that defendant made such claim at trial, nor to afford reasonable basis for such an inference, 121 C 554
considerations which may warrant discussion of matters not raised on trial do not extend to issues specifically disclaimed in trial court, 122 C 571
when rule may be suspended, 123 C 655
only under exceptional circumstances does court consider claims which do not appear upon record to have been made in trial court, 124 C 569
question interpolated into case in brief not considered when not raised in trial, 125 C 59
court may consider error apparent on record when case is important to public; also to prevent manifest injustice, as when both counsel and court below overlooked an applicable statute, 125 C 313
exception to usual rule where pertinent statute has been overlooked, 125 C 501
circumstances affecting appellant's claim not such as to justify departure from usual rule, 125 C 587
not obligated to consider contention not advanced upon trial, 126 C 36
where case tried on merits, party not permitted after judgment to take advantage of defects in procedure which could readily have been amended, 126 C 579
question not raised at trial may be considered on appeal where public welfare or justice between individuals requires, 128 C 475
——this course has been followed where error was manifest, where applicable statute was overlooked, and where error went to vital issue, 128 C 475
——so court considered claim of law founded on a statute though it was not raised on trial, 128 C 475
only way to present claims of law which finding does not show were made at trial is by proceedings to rectify appeal, 129 C 11
claim not among those appearing in finding not considered, 129 C 474

§ 10. ——Miscellaneous Cases

new trial not granted for objection to form of action not made below, 8 C 242
new trial not granted because note was not canceled, in action on original demand, unless such objection was made below, 9 C 31
no new trial granted where question whether law of New York should govern was not raised below, 11 C 407
certain questions *held* not to have been raised, 54 C 592, 60 C 244
objection that certain charitable companies had no power to take certain legacies, no evidence being offered below, *held* not well founded, 63 C 382
unless question raised court will not consider inartificiality of demurrer, 73 C 538
——constitutionality of statute, 75 C 192
——defect of parties, 76 C 252
——failure to give judgment against party, 68 C 511
——that representation relied on in fraud is matter of opinion, 71 C 13
——variance, 82 C 343, 83 C 458, 641
——laches, 85 C 564
appellant not in position to criticize charge, when, 85 C 55
unless claim of delay in bringing proceedings was made in lower court, not considered, 85 C 557
negligence not alleged in complaint cannot be urged on appeal, 88 C 17

if right to examine jurors is claimed and denied in trial court, may be assigned as error, 89 C 46
if no request to charge made nor notice taken of it in brief, cannot be considered on appeal, 89 C 343
erroneous ruling striking case from jury docket cannot be treated as harmless upon other grounds than those raised on trial or passed on by court, 90 C 133
overlooking material statute on trial may be error, 92 C 552
failure to charge as to matter not raised by pleadings or claims of parties is not error, 92 C 608
question not raised or ruled on below not open, 93 C 392
——as failure of complaint to allege consideration for order to pay money, 93 C 399
——as in highway grade case, failure of proof as to inability of town and landowner to agree on damages, 94 C 150
objection that action not brought by real party in interest comes too late on appeal, 94 C 452
cannot complain in Supreme Court of inadequacy of notice of damages if more specific statement not asked for or the evidence not objected to, 94 C 481
last clear chance doctrine not available where not raised by pleadings or on trial, 95 C 431
an amendable defect in pleading must be seasonably objected to, 99 C 644
too late to urge in this court lack of innuendo in complaint for slander, 99 C 719
in fraud action where complaint failed to allege that representations were made recklessly but case was tried on that theory, too late to object to pleading on appeal, 103 C 240
claim that rent not offered in "legal tender" cannot be made for first time in Supreme Court, 104 C 112
where interest not questioned on trial or appeal, it cannot be raised on appeal from retrial, 105 C 242
objection must be promptly made to improper argument to jury, 106 C 119
where case tried solely on theory of promise to pay for services, issue of implied obligation not open on appeal, 106 C 511
question of venue waived by failure to raise it, but not question of jurisdiction, 108 C 74
construction of contract, not claimed on trial, cannot be raised on appeal, 108 C 126
defense of governmental immunity supported by general denial if no objection raised at trial, 108 C 622
when neither in pleadings nor requests to charge is claim made of intervening negligence, not error to fail to charge as to it, 109 C 207
——court justified in submitting case upon basis of claims made, 109 C 207
though not party of record, person considered such where appearance entered and so treated by court and plaintiff, 109 C 329
charge of arson under wrong statute not reversible error where not objected to, 109 C 394
failure to take exception to argument of state's attorney was waiver of right to question it on appeal, 109 C 394
contention that three offenses charged in criminal prosecution were really one must be raised on trial, 109 C 573
defense of Statute of Frauds not determined, where not raised at trial, 109 C 593
attention of court not called to argument of counsel objected to on appeal, nor exception taken, 111 C 99
where in will contest partial invalidity of will was not claimed, question not open on appeal, 111 C 316
where all parties treated note as negotiable, consideration confined to claimed errors as they appeared on trial, 111 C 568
too late to make claim that provision in contract is void as against public policy where right to recover was based on provision, 113 C 429
though point not raised, court may consider it, 113 C 779
——as where trial court gave judgment because notice of nonpayment of note was not given, overlooking express waiver of such notice in note, 113 C 779
claim that there is no statutory authority for action against husband for support comes too late where no demurrer filed, 114 C 575
where issue of contributory negligence does not appear to have been raised on trial, it will not be considered on appeal, 114 C 726
claim that provision in deed created personal easement and not one that ran with land, not made at trial, not considered on appeal, 115 C 727
claim that mortgage foreclosure should be restricted to one of two lots in tract, though not raised in trial, discussed to obviate further litigation, 116 C 253
where complaint stated facts sufficient to make applicable special act, that it was not called to attention of trial judge does not prevent its consideration, 116 C 311
where court examined file of action at appellant's request, and other files without exception taken, claim of error not sustained, 116 C 384
claim that fence has become boundary between lots by acquiescence of parties not made in trial court, 116 C 440
fundamental that Supreme Court wil not, except in unusual cases, consider any questions not distinctly raised at trial, 116 C 730
——as where objections were made to allowances to appraisers but finding contained no

statement of their nature or claims of law, 116 C 730

K requested charge de question of whether G was acting within scope of employment by K; after verdict rendered, too late to raise objection on ground that complaint did not so allege, 117 C 165

in absence of claim by K at trial that he and B were engaged in joint enterprise, and contrary theory adopted by him in requests to charge, he cannot press this claim on appeal, 117 C 165

whether receivership of trustee bank would be ground for its removal considered though not raised in lower court, 117 C 584

where no claim of want of venue made at trial, it cannot be raised on appeal, 117 C 683

alleged error in charge not discussed where claim was not made in trial, 118 C 501

assignment of error will not raise issue of assumption of risk when not claimed upon trial, 119 C 234

money judgment, aside from relief based on fraudulent conveyance, not claimed at trial or on brief; not considered by Supreme Court, 121 C 207

that plaintiff was estopped because of remarriage from attacking agreement modifying prior support agreement, not raised at trial, 121 C 289

motion for mistrial or to set aside verdict necessary if relief is to be claimed for improper argument of counsel, 121 C 322

court considered appellant's contention in boundary line case, though not raised at trial, 121 C 350

no exception required to take advantage on appeal of action of court in proceeding with trial in absence of counsel, 121 C 366

where no claim made at trial, nor in brief or argument, that oral cancellation of contract ineffective because of Statute of Frauds, question not considered, 123 C 603

claim that corporate defendant could not be member of partnership not entertained on appeal where not raised upon trial, 124 C 505

claimed error in charge de intersection could not be ruled upon where claims of proof conclusive that no such claim made or presented to trial court and no evidence offered relative to it, 125 C 36

where it was conceded that Statute of Limitations had run, trial court under no obligation to charge that the burden of proof was on defendant to show this fact, 125 C 196

though complaint included allegation of conversion, no claim made at trial so as to apprise court that damages claimed on that ground, 125 C 445

too late after trial to raise objections to charge of court to grand jury, 126 C 60

where claim of no consideration for promise not made in trial court, not considered on appeal, 126 C 582

question of jurisdiction may be raised at any time, 128 C 156

where information charged crime of embezzlement in general terms but court and parties assumed it was under statute, question of guilt under another statute not considered, 128 C 158

where court gave plaintiff chance to amend complaint so as to raise another issue, but he elected to stand on appeal from judgment on fraud count, he is confined to that issue, 128 C 204

though appellant made claim of fraudulent conveyance in brief, trial court did not find facts necessary to raise issue and there was no request to add them to finding, 128 C 545

question of breach of covenant not raised at trial not considered on appeal, 128 C 620

attorney should cooperate in court's efforts to ascertain any objections to charge, during and after delivery, 129 C 123

——but no statute or rule of court requires exceptions to charge to be taken at time of delivery, 129 C 123

§ 11. ——Evidential Matters

admission of improper evidence is no ground of error unless properly objected to, 10 C 156

new trial not granted for admission of incompetent evidence not objected to, 13 C 163

——nor unless objection made at trial, 13 C 367

——so declarations of a conspirator, not objected to, 21 C 234

new trial not granted for objection to manner of proof if none made to its admissibility, 28 C 573

alleged variance must be the identical one urged below, 47 C 290

no error can be claimed in admitting evidence not objected to, 54 C 93

only objections made to evidence below will be considered, 65 C 538, 66 C 334, 76 C 342, 77 C 267, 82 C 454, 90 C 126

——thus use of copy in place of original, 88 C 515

——sufficiency of notice, 69 C 557

objection to hearsay evidence does not raise question of variance, 66 C 165

objection to sufficiency of evidence must be made below, 69 C 469

——and so all objections to evidence, 76 C 342

——and exception must be taken, 91 C 431

if objection is general and ruling is sustainable on any ground court will not find error, 69 C 512, 70 C 530

where offer of evidence is not clear and court mistook purpose its exclusion will not be held error, 81 C 268

must show trial court where the variance exists to bring it up on appeal, 82 C 344
exception to ruling on the trial is necessary ordinarily only as to evidence, 89 C 49
appellant confined to same objections to evidence as raised in lower court; cannot claim some portions of letter were irrelevant if he claimed all were irrelevant, 90 C 126
evidence, unless objected to or asked to be stricken out in court below, cannot be reason of appeal, 90 C 544
variance must be claimed on trial, 91 C 250
necessity of exception to ruling on evidence, 93 C 328
objection to evidence should state grounds therefor, 93 C 329
grounds of objection to evidence not made in trial court will not be considered, 95 C 534
variance, unless claimed on trial, will ordinarily be deemed waived, 98 C 571, 104 C 17
ruling on evidence not reviewable unless exception taken, 100 C 492, 101 C 439
claim that accused not proved guilty beyond a reasonable doubt not open unless trial court overrules a similar claim, 102 C 658
error cannot be based on admission of evidence in absence of objection or motion to strike out, 106 C 260
objection to evidence not considered if not made on trial, 106 C 303
admission of evidence not objected to, or attacked by motion or request to charge, not ground of error, 106 C 346
ruling on evidence not error unless objection stated with sufficient definiteness, 107 C 434
proof of facts beyond those alleged, if within the issues, is waived by failure to object, 107 C 484
ground of admissibility, not claimed on trial, cannot be urged on appeal, 108 C 163
questions of evidence to be tested by claims made on trial, 109 C 305
error claimed because of submission to jury on family-car doctrine too late, when no objection made to evidence on trial, 109 C 417
if evidence rightly excluded when offered for a particular purpose, no error though it would have been admissible for another, 111 C 342
where no ground of objection to evidence is stated, admitting it is no error because of reasons subsequently developing, 111 C 410
claim of variance must be raised in trial court to be taken advantage of on appeal, 112 C 381
claim on appeal that trial court erred in admitting testimony of plaintiff's fall because complaint did not allege it, too late when not made at trial, 115 C 650
correctness of ruling determined on basis of objection made at trial though broader grounds are claimed on appeal, 115 C 725
where purposes of evidence are not obvious and were not presented to trial court there was no error in excluding it, 116 C 127
where no ground for objection to question was given in trial court, and reason urged on appeal was not urged in trial court, it will not be considered, 116 C 389
claim of variance cannot be made in Supreme Court where not made in court below, 117 C 11
exception must be taken to ruling on evidence which is to be reviewed, 118 C 174
where plaintiff contests case on merits without objection or protest on ground of claim of material variance he cannot take advantage of it on appeal, 120 C 230
party cannot on appeal take advantage of claim of variance not urged in court below, 120 C 581, 122 C 626, 129 C 30
evidence by defendant of expectancy of life of decedent due to disease, and motion for insertion of finding of expectancy, sufficient to raise issue of apportionment on appeal, 121 C 71
claim that sketch was admissible as past recorded recollection cannot avail where not made at trial, 123 C 50
specific objection to documentary evidence not made in trial court not available on appeal, 125 C 103
general objections to testimony will not avail on appeal if evidence is admissible for any purpose, 129 C 386

§ 12. Record

§ 13. ——In General; What Constitutes

under old practice, motion for new trial was not part of record, 29 C 126
the loading of an appeal with statements of irrelevant matter condemned, 53 C 241
stipulation of counsel as to questions to be argued disregarded, 64 C 240, 80 C 549
——so one as to scope of objection to deposition, 64 C 406
——so one as to facts where appeal was from ruling on demurrer, 82 C 91, 83 C 689
——how stipulation may be made part of record; incorporation in memorandum of decision, 80 C 426, 91 C 696
judge's memorandum of decision as part of record, 64 C 439, 70 C 115, 75 C 88, 80 C 433, 83 C 690, 85 C 260, 86 C 99, 234, 87 C 608, 88 C 142
on appeal by State in criminal action, permission of judge should appear of record, 65 C 282
extrinsic evidence may be received to prove that matter within issue raised in prior action between same parties was raised and decided in such action, when the fact does not appear by the unaided record, 66 C 248
record imports verity; error to be corrected in trial court, 67 C 71, 75 C 1, 82, 76 C 454, 82 C 377
——as date of judgment, 90 C 553

ought not to be burdened with matter seeking retrial of question of fact, 69 C 404, 77 C 359
——as unnecessary printing of evidence, 81 C 288
preparation of, is clerical service, 71 C 632, 73 C 444, 77 C 663
on appeal from ruling on demurrer, facts found on subsequent issue may be used, 74 C 689, 83 C 634, 87 C 341, 91 C 356
is presumed to contain whole history of case, 75 C 354
should not contain superseded pleadings, 77 C 663
——or unnecessary items of bill of particulars, 77 C 1
transcript of evidence and charge made part of record but not printed may be referred to, 79 C 315
——so printed transcript may be referred to, to supplement finding, 71 C 668, but see 87 C 333
——it cannot take place of the finding, 80 C 596, 82 C 547, 87 C 616, 89 C 385
statements in draft finding cannot be used unless authenticated, 79 C 535
nature of stipulation by counsel, 80 C 434
exception to ruling on demurrer to pleading which has been replaced no part of record, 80 C 552
stenographer's notes not part of record for appeal unless made so by proper procedure, 82 C 547, 87 C 616, 89 C 385
what necessary to print where two cases are tried together, 83 C 1
mere reference in finding to exhibit, and printing it at the request of one party, does not make it a part of record, 83 C 111
if record only presents pleadings and judgment, sole question is, can former support latter, 83 C 697
in absence of finding, judgment file only source of information as to issues decided, 85 C 260
charge improperly printed, may be referred to, to see what issues went to jury, 85 C 333
judgment file should not include finding made for appeal, but, if it does, facts will be regarded, 87 C 32, 608
document erroneously excluded, but printed, will not be regarded, 87 C 32
in will case, court will assume that all facts favorable to appellant appear of record, 87 C 175
stenographer's notes of evidence before a committee not part of record, 87 C 242
material fact not found may be supplied from other parts of record, 88 C 130
memorandum of decision not part of record, unless made so, 91 C 692, 92 C 378
agreed statement of facts not part of record unless made so, 91 C 692
on appeal from ruling on demurrer, facts found may be used, 92 C 646
workmen's compensation case; evidence should not ordinarily be certified, 93 C 90
recital in judgment file conclusive in absence of anything to show its inaccuracy, 93 C 116
in passing upon demurrer to complaint, special finding of facts has no place and will be stricken out on motion, 93 C 160
statement of fact in charge, not questioned, may be treated as true, 93 C 446
on appeal from failure to secure correction of finding of compensation commissioner, 95 C 674
court acts on facts of record, assuming party has presented all facts he can or cares to, 96 C 413
view of premises in negligence action does not necessarily put jury in possession of material evidence not of record, 98 C 297
in absence of motion to correct, only facts found are before court, 98 C 349
uncertified evidence, though printed, cannot be considered, 102 C 353
if fact is immaterial or irrelevant incorporation in agreed statement does not make it otherwise, 103 C 565
duty of counsel to see that long unnecessary quotations from evidence be not printed, 103 C 701
record on appeal by accused tried to court on ground that he was not proven guilty beyond a reasonable doubt, 105 C 327
recital in judgment file that certain issues found for plaintiff as equivalent to finding that other issues not proved, 105 C 503
on appeal from action of compensation commissioner as to reopening award for newly discovered evidence both original evidence and new evidence should appear, 106 C 2
impropriety of having all evidence printed where question is as to objectionable argument, 108 C 290
courts, counsel and clerks should co-operate to make all proper abridgments of record, 108 C 659
——printing arguments and colloquies of counsel discountenanced, 108 C 671
inclusion in printed testimony of long discussions by counsel discountenanced, 112 C 115
colloquies between counsel as to rulings on evidence and other matters not ground of appeal should not be printed in record, 115 C 457
contempt proceedings against reporter because of newspaper article stating that defendant was insured no part of record of trial, 115 C 563
to determine what standard of care court applied, this court may consult memorandum of decision, 116 C 511
certificate of official stenographer making correction in printer transcript proper, 117 C 5

——such correction should be submitted to trial judge for his certification, 117 C 5
though recital in record of jurisdictional fact is in general conclusive, yet it is not so where other portions of record show fact to be otherwise, 117 C 39
no basis in record for use of exhibits before referee which were not annexed to remonstrance in connection with excerpts of evidence, 117 C 138
transcript of proceedings before trial court unnecessarily included, 117 C 307
duty upon all concerned in preparation of record, and not least upon counsel, to see that extraneous matter is not made part of it, 118 C 42
court referred to evidence in record to amplify statement of rulings on evidence, 118 C 117
where appeal is from refusal to reopen case and evidence on first hearing is in record, to secure corrections of finding, it may be incorporated by reference in finding to review ruling refusing to reopen case, 118 C 295
retention of pleadings which have become obsolete discountenanced, 118 C 544
where court corrected its record of recognizance and this correction was certified by the clerk, failure formally to correct appeal record overlooked, 119 C 564
agreement of counsel that trial solely to determine amount of damages should be made part of record, 125 C 215
duty of counsel to see that nothing is included in record which is not necessary for proper presentation of assignments of error, 125 C 259
when transcript of evidence is certified, exhibits admitted in evidence come as part of it without printing unless court so orders; additional expense and trouble of printing their contents unjustified, 126 C 692

§ 14. ——Necessity that Error Appear of Record

error in judgment is never presumed, K 392, 2 D 21
——must be manifest on record, 2 D 21
admission of improper evidence must appear on face of record, 21 C 505
the precise matter relied on in motion in error should be set out in motion, 24 C 618
plaintiff in error must show affirmatively that there is actual error, 25 C 498
on motion in error, judgment can be reviewed only for errors apparent of record; cannot be predicated on facts alleged but not found or admitted, 49 C 335
under act 1882, chapter 50, an appeal on the ground of error in the record simply performs the office of the old motion in error or writ of error, 52 C 274, 55 C 155
——where record omits facts essential to appellant's case the Supreme Court can simply affirm the judgment, 52 C 273, 274, 53 C 150
——cannot remand case to lower court for further hearing and finding, 52 C 274, 53 C 150
when record fails to present essential facts, judgment must be sustained, 53 C 150
claims of error must be supported by the record, 54 C 81, 72 C 173, 75 C 55, 81 C 532, 592, 84 C 215, 88 C 528, 89 C 417, 91 C 448
——they must not contradict the record, 67 C 71, 75 C 30
evidence presumed to have been applied to proper purpose in absence of record to contrary, 55 C 45
may review errors where it necessarily appears that they were decided below, 57 C 524
actual fraud will not be presumed on appeal, where none is found by the trial court, 58 C 82
if no error appears, court will not reverse judgment, though it cannot see how decision was reached, 65 C 442
record must support claim that damages are excessive, 66 C 510
in negligence case, record must show that rule of law was involved, 66 C 536
unless appellant makes out a case on the record, the appeal fails, 69 C 719
if failure to rule on claim of law be assigned, its materiality must appear, 72 C 166
case will be decided solely on facts of record, 72 C 444
——and stipulation of counsel cannot import question not supported by them, 64 C 240, 80 C 594
if only part of record printed, decision must be upon that part, 72 C 444
if nonexistence of fact is claimed as error, record must show it did not exist, 72 C 574
assignment based on matter included in application to rectify finding, 72 C 628
where claim is that judge did not properly present facts to jury, record must be framed to present that question, 75 C 55
error cannot be based upon assumption as to action of trial court, 76 C 153, 79 C 266
——or as to facts, 76 C 497
stipulation of counsel in the trial court necessary to support claim must appear of record, 80 C 426
in absence of objection court assumes matter of taxation of costs properly called to attention of lower court, 81 C 216
it must appear of record that claim was made on trial, 81 C 533
facts supporting claim must appear, 81 C 592, 84 C 429, 91 C 354
sufficiency of complaint on demurrer limited to facts that appear on complaint; cannot consider facts stipulated, 82 C 91
on appeal it is of no importance that an ordinance required a certain kind of ceiling in

a certain kind of house unless the building is of that kind, 82 C 252

no claim can be made as to subject matter not in record, 82 C 547

it must appear that error entered into judgment, 83 C 690, 85 C 567

where record only contains pleadings and judgment, sole question open is, can former support latter, 83 C 697

case should not be erased unless ground is clear on face of the record, 84 C 24

court will not assume that changes were made in return of process where record is silent, 84 C 618

no assumption that officer's return correct except as it appears on the face of the record, 84 C 619

claim not supported by the record presents no question for consideration, 84 C 702

record must contain number and full description of rejected ballots on an appeal from a judgment for a recount, 85 C 394

court will not consider rights based on facts not of record, 85 C 452, 613

question must be raised at trial and embraced in request for finding, 85 C 567

where it appeared that court consulted testimony before committee but such testimony not in record, Supreme Court cannot determine question of error, 87 C 241

cannot consider errors without foundation in the record, 89 C 417

record must show witness as expert in order to hold that exclusion of evidence offered is erroneous on that ground, 91 C 431

claims of law with no basis in record not considered, 91 C 448

unless record discloses something to the contrary recital in judgment file as to court having found issues for one party is final, 93 C 116

in absence of any claim, evidence or finding, cannot say there was error, 93 C 146

assignments not supported by record disregarded, 93 C 302, 97 C 222

unless pleaded, duress not regarded, 98 C 576

unless record discloses it, court cannot assume that answer to hypothetical question rested on assumption of fact not stated, 99 C 582

error cannot be based on denial of motion to compel plaintiff to elect whether to pursue principal or agent where record does not show motion, 100 C 12

failure of court to consider material evidence is error, 100 C 254

——but available only where finding shows it or evidence is before court, 100 C 254

claims of error as to which record furnishes no facts or setting disregarded, 100 C 379

motion to separate into counts not basis of error where it does not appear to have been ruled upon, 100 C 727

no claims of fact can be available on appeal from acceptance of referee's report except such as it supports, 101 C 535

where charge is not printed on appeal, it must be presumed to be correct, 104 C 508, 105 C 162

though request to charge is correct statement of law, refusal is not reversible error unless record shows it applicable to situation before the court, 105 C 453

whether complaint for fraud also stated action for breach of contract, *held* not presented on record, 105 C 631

rulings on demurrer or motion to erase not mentioned in judgment not reviewable, 106 C 1

where plaintiff's case depends on showing of special injury and finding does not show it, resort may not be had to evidence, 106 C 316

in workman's compensation case court declined to pass on question not involved in appeal though both parties argued it before commissioner and Superior Court and sought a decision, 109 C 45

assignments of error based on rulings which do not appear of record will not be considered, 110 C 255

document excluded should have been marked for identification to render its admissibility reviewable, 112 C 421

ground of exception to ruling must be stated, 113 C 209

general objection to examination of witness, that it was cross-examination; should be to specific questions, 114 C 247

statement of trial court in excluding evidence, in absence of anything to the contrary, treated as correct, 114 C 574

where objection to evidence was not based on claim of irrelevancy, this not considered on appeal, 115 C 504

where bearing of evidence offered is not clear and record does not disclose that claims made on appeal were advanced on trial, no error will be found in excluding it, 116 C 135

where evidence did not appear in record, no way of testing if it was not ample to support conclusion, 116 C 593

record of commitment by justice was not filled in, in part reciting that—was minor and—appointed guardian ad litem; on writ of error *held* that in view of failure to fill spaces and that plaintiff in error jointly tried with four others record cannot be read as containing finding that she was minor, 116 C 722

——and therefore failure to appoint guardian ad litem not error, 116 C 722

checks not marked for identification not before Supreme Court; it cannot determine if their exclusion was prejudicial, 126 C 305

Supreme Court is confined to record and cannot consider matter not appearing or fairly deducible from it, 126 C 465

——that jury visited premises may also be considered, 126 C 465

where record did not say that defendants contested agency and they made no attempt to correct it, no error in statements in charge that alleged assault was in scope of employment, 128 C 654

remonstrance intended to secure recommittal must be accompanied by evidence; otherwise Supreme Court cannot review ruling of trial court denying relief of this nature, 129 C 295

where record is silent as to reasons for commissioner's action in designating another commissioner to sit on case, they are assumed to be sufficient, 129 C 591

§ 15. Taking the Appeal; Procedure

§ 16. ——In General; Stay of Execution

stay does not affect validity of judgment lien, 61 C 237

under statute an appeal or writ of error is not in any sense a criminal proceeding, 61 C 501

——bond for costs by appellant's attorney not invalidated by statute de recognizance in criminal cases, 61 C 499

appeal stays execution when, 62 C 487

amendment to appeal must be made in appellate court, 72 C 86

execution may issue after notice of appeal is filed, 72 C 448

acts as supersedeas of death sentence, 82 C 60

it is proper to file another appeal after a finding, merging it with the former, 83 C 569

defendant may appeal from granting of motion to set aside verdict in his favor, 84 C 268

appeal itself, not proceedings preparatory thereto, stays execution, 84 C 566

notice of appeal and request for finding stays foreclosure proceedings, 89 C 413

where, in action ex contractu, one defendant prevails but other loses, judgment for former is final despite appeal of latter, 97 C 223

belated appeal is not void, but voidable, 104 C 351

court may accept bond after expiration of time for allowance of appeal, 107 C 354

except perhaps in special cases, Superior Court cannot grant bail in criminal cases pending on appeal, 109 C 739

provision for stay of execution for two weeks applies to peremptory writ of mandamus and other like writs, 115 C 98

where court opened judgment on same day appeal was filed and it did not appear which first occurred, no occasion to inquire whether after appeal taken court could open judgment, 119 C 70

stay of execution is not necessary incident of appeal or writ of error, 119 C 222

§ 17. ——Form and Contents; Taking Appeal from Judgment and from Action on Verdict

NOTE: The "double appeal" from the judgment and from the court's action on the verdict was eliminated by statute in 1943, and a single appeal established.

appeal taken properly from District Court of Waterbury to term at Bridgeport, 62 C 506

joining appeals from action on motion to set aside verdict with appeals for error on trial, 66 C 267, 72 C 628, 73 C 360, 80 C 192, 82 C 386, 86 C 100, 87 C 692

——so where appeal is taken from refusal to direct verdict, 83 C 568

term "next to be held" defined, 67 C 19

appeal not taken to proper term was abatable, 67 C 19, 85 C 618

formerly time and place of court's sitting had to appear, and general appearance did not waive defect, 70 C 329

——but if date appeared by implication, that sufficed, 76 C 355

noting bond or recognizance, 75 C 650

appeal reasonably taken from denial of motion for a new trial continues cause until appeal from final judgment is perfected, 82 C 386

——but defective appeal cannot be saved by joining with it later perfect one, 82 C 386

under former law, appeal not stating to what term taken was fatally defective, 82 C 386

——so one not taken to next term, although that was day after appeal was filed, 83 C 134

appeal cannot be amended so as to make it returnable to an earlier court, 82 C 387

no good reason for allowing amendment to appeal by inserting term already expired, 83 C 134

appeal not taken to term next after filing of appeal does not justify an appeal to a later term, 83 C 134

that next term begins on day following filing of appeal does not justify appeal to a later term, 83 C 134

appeal must be made from refusal to set aside verdict if it is to be urged as error, 83 C 300

motion for new trial for verdict against evidence addressed to Supreme Court improper, 83 C 568

where after appeal is taken another is joined to it, new bond not necessary, 83 C 568

words sufficient to indicate court, time and place to which appeal is taken, 83 C 569

appeal from a verdict of November 11 must be taken to a term of court held on third Tuesday of January, 85 C 618

statute must be strictly complied with as to form and requirements of appeal, 85 C 618
form for appeal for errors and from denial of motion to set aside verdict, 87 C 692
on appeal from motion to set aside verdict, it is sufficient to state in notice that party "appeals from judgment," 91 C 383
need not contain prayers for relief, 91 C 531, 731
new bond not necessary where supplementary appeal is taken and consolidated, 93 C 252
no distinction in taking and perfecting appeals in civil and criminal causes, 95 C 451
appeal from the judgment, not motion to set aside or motion in arrest, is proper method to secure review of rulings on evidence, 96 C 571
not necessary to describe term; hence error in such description immaterial, 97 C 414
sufficiency of evidence to establish guilt beyond reasonable doubt in trial to court; how reviewable, 105 C 326, 109 C 126
claimed errors in trial of an action, and in denial of motion for a new trial, may be included in one appeal, 105 C 710
only method of appeal where verdict set aside is that provided in statute, 108 C 680
appeal from motion to set aside verdict should be dispensed with in criminal cases tried to court, 109 C 124
——same purpose attained by simple assignment of error when appeal taken, 109 C 124
under statutes before 1929, appeal from denial of motion to set verdict aside is distinct from appeal from judgment and must be taken within time fixed by statute, 114 C 416
in criminal case sufficiency of evidence tested by appeal from denial of motion to set aside verdict, 114 C 456
appeal taken from judgment instead of specifically from motion to set aside verdict satisfies rule if within two weeks from decision of latter, 115 C 208
appeal from the verdict "and from the action of the trial court in failing to set aside the verdict of the jury," within two weeks, sufficient to bring up action of court in denying motion to set aside verdict, 115 C 722
——but not such an appeal as would permit raising errors claimed to have occurred on trial by a finding, 115 C 722
while appeal may be in form one from judgment, if it is limited by reasons thereof to review of decision on motion to set aside verdict, court may treat it as appeal from that decision only, 118 C 581
——so in case of improper appeal "from the judgment," there being no judgment, but where reasons of appeal were filed within prescribed two weeks, 118 C 581
appeal from judgment erroneous in form, where assigned error relates only to setting aside verdict, 118 C 699
——but appeal entertained, as assignment limiting its scope was filed within two weeks after decision upon motion to set verdict aside, 118 C 699
appeal not accompanied by requisite bond void and of no effect, 119 C 70
rules governing appeal from decision on motion to set aside verdict require appeal, not from judgment, but from decision on motion, 119 C 310, 400
——when appeal is filed within time allowed by rule and is accompanied by proper assignment of error, mere fact that it purports to be taken from judgment of court may be disregarded, 119 C 310, 400
——but appeal from decision upon the motion cannot be combined with one from judgment entered on verdict into a single appeal, 119 C 310, 400
appeal from ruling on motion to set aside verdict cannot be combined with one from the judgment, 124 C 686
——but where appellant took all necessary steps, court gave him election to withdraw either appeal, 124 C 687
how to include appeal from appointment of receiver of rents in appeal taken from judgment rendered before appointment, 126 C 715

§ 18. ——Time for Taking; Extension

NOTE: Under the rules taking effect in 1931, the time for taking an appeal was fixed at two weeks from issuance of notice of judgment or from decision on motion to set verdict aside. Under the practice previously existing the appeal also included the reasons of appeal and in cases where a finding was necessary it could be filed ten days after such finding was made.

slight immaterial changes in finding on file does not extend time, 54 C 116, 73 C 315
written motion to restore case to docket which had been erased operates of itself to defer, until it is finally disposed of, the time for appealing from order of erasure, 64 C 526
time of taking runs from entry of judgment, 70 C 332
suspending time for taking when party dies, 74 C 729
entertaining motion to restore case to docket may extend time, 75 C 544
order extending time should be recorded; casual remark not enough; necessity of hearing, 75 C 641
judgment is rendered when judge pronounces his decision, though record is later made, 76 C 454, 82 C 376, 386
——but finding amount due in foreclosure without fixing law day and directing party

to prepare judgment is not rendition of judgment, 89 C 413
appeal taken within ten days of filing of finding good, though finding is later refiled, 77 C 359
what constitutes filing of finding; effect of withdrawal and refiling, 78 C 14
extension in condemnation proceedings, 79 C 526
——where motion to set aside verdict is denied, 84 C 577
judge may extend time as to matter pending before him as judge in the same manner as if he had rendered judgment in court, 79 C 528
extension may be granted after ten-day period has expired, 79 C 582
time for appealing; notice of appeal not appeal; if not taken within time fixed is abatable, not void, 80 C 192, 374
time for taking appeal from judgment dissolving corporation is at once; not deferred until after assets have been ordered distributed, 81 C 592
two weeks for filing runs from date judgment formally announced, 82 C 376
if judgment corrected in trial court, this does not create a new judgment so as to compute time for taking appeal therefrom, 82 C 376
appeal taken within ten days of filing finding, seasonably taken, though reasons of appeal attack errors of record only, 83 C 27
extension covers any appeal taken within it, 83 C 31
on appeal from denial of motion to set nonsuit aside, certification of evidence not extension, 83 C 316
extension discretionary; notice and hearing not necessary, 87 C 692
practice of granting extension of time is liberal, 89 C 667
exceptions taken to refusal to correct finding and certifying evidence, not an extension, 89 C 667
when last day for taking appeal falls on Sunday or holiday, it may be taken the next day, 90 C 714, 91 C 383
time to take, from erasure from docket; effect of motion to restore, 92 C 649
suspension during July and August, 92 C 651
extensions to be liberally granted, 92 C 652
time runs from date decision is filed, not date stated on memorandum, 93 C 252
——presumed, in absence of date of filing, that it was date clerk notified counsel, 93 C 252
when ten-day period begins for appeal from motion for new trial, 93 C 252
where notice of appeal is filed, but next step not taken in statutory time, appeal is deemed abandoned, 97 C 387
where motion for rehearing is reserved for future argument, time runs from its disposition, 103 C 433
in criminal case tried to court, where only reason of appeal is based on sufficiency of evidence, appeal must be taken within ten days of judgment; if other reasons assigned, appeal to be taken in regular course, 105 C 326
extension of time for filing appeal does not extend time for filing copy of all the evidence, which must be done within one week unless extension for due cause granted, 107 C 77
failure to appeal from decision on motion to set aside verdict within time allowed can be attacked only by plea in abatement, 107 C 365
granting oral request for extension without notice not proper practice, 108 C 451
——but if done, it is irregularity, waived if objection not seasonably made, 108 C 451
——granting of request to file appeal, not made conditional on consent of opposing counsel, is equivalent to extension of time, 108 C 451
——if record shows nothing to contrary, good cause for extension will be assumed, 108 C 451
where finding is refiled, time to take appeal runs from date of refiling, 112 C 447
appeal removes case to this court, 112 C 596
——hence where an extension of time to take appeal was granted and appeal was taken, extension cannot be revoked by trial court on ground it was not properly granted, 112 C 596
notice and hearing on motion for extension of time not ordinarily necessary and lack constitutes error only in event of abuse of discretion, 112 C 596
——allegation that no cause was shown for granting extension not admitted by demurrer where all facts appear of record, 112 C 596
——extension of time for request for finding permits appeal after finding filed which disregards it, 112 C 598
——where extension of time to file draft was granted, further brief extension of time to file appeal without any request *held* justified, 112 C 599
extension of time to appeal, 112 C 674
——cannot be granted if no cause shown, 112 C 674
——vacating order and re-entering it simply for the purpose of permitting appeal, the time for which had expired, *held* improper, 112 C 674
where appellant appealing from denial of motion for new trial because verdict was against the evidence sought request for finding in attempted appeal which was dismissed, trial court might extend time in

which to file appeal from judgment, 115 C 722
purpose of rule requiring notice of appeal to be filed during summer months is to extend time during which execution will be stayed, 118 C 81
——if no notice filed, execution may be taken out after two weeks and thereafter no right of appeal, 118 C 81
——but where no execution taken out, trial court may grant extension of time to take appeal, 118 C 81
appeal not taken in time allowed is voidable on plea in abatement, 119 C 442
——but where no plea filed appeal treated on merits, 119 C 442
record barren of facts indicating court abused discretion in refusing to extend time for taking appeal, 119 C 697
motion to restore case struck from docket is like motion to reopen judgment, 120 C 120
——decision upon it is not basis of appeal but it may postpone limitation of time within which appeal from judgment striking case from docket must be taken, 120 C 120
——so appeal taken within ten days from denial of motion to restore sufficiently complied with rules, 120 C 120
motion to reopen judgment, to reargue case and the like may, if filed before time for taking appeal has expired, have effect of extending time to appeal (footnote), 120 C 406
——decision of the motion sets running the time within which appeal must be filed, 120 C 406
——and filing motion for extension of time to make request for finding, could not be deemed waiver of right to appeal, 120 C 406
extension of time within which to file papers may be granted after time fixed by rule has expired; court, by acting upon a motion filed late, impliedly extends time, 120 C 457
court may extend time either for filing appeal or paying fee or giving security, 122 C 181
——but in absence of any contrary showing extension of time to file appeal includes other two, 122 C 181
procedure established by rules for securing extension of time should be followed, 122 C 181
——but where motion was presented directly to judge and extension granted without notice and hearing, his action will not be held erroneous if reasons adequate, 122 C 181
——procedure is directory and failure to follow it disregarded unless party deprived of some right, 122 C 181
time of appeal runs from announcement by trial court of its decision orally or by filing memorandum, 123 C 607
——not postponed to formal entry of judgment, 123 C 607
——if, however, motion to open judgment or the like is made, time to appeal runs from decision on motion, 123 C 607
——in jury trial acceptance of verdict corresponds to announcement of decision and sets running time for appeal, 123 C 607
——if motion to set verdict aside is filed, this may postpone time, 123 C 607
——but if appeal is filed pending decision of motion and not withdrawn, it is valid and becomes effective if motion is denied, 123 C 607
motion to reopen judgment may postpone time within which appeal need be taken; but, if filed after time within which party has right to appeal, it will not revive that right, 129 C 376
appeal filed year after original judgment in foreclosure, though motion to open judgment intervened, entirely too late, 129 C 377

§ 19. ——Notice of Appeal

NOTE: Under the rules taking effect in 1931, the notice of appeal was dispensed with, except during July and August.
extending time for filing, 64 C 526
notice is not appeal, 67 C 21, 80 C 192
time for notice and finding not extended by late motion to reopen judgment, 81 C 249
filing within one week of filing of memorandum of decision or of return and acceptance of verdict is proper, 82 C 386, 91 C 383
notice of appeal filed within prescribed time after acceptance of a verdict is sufficient, 82 C 387
filing notice of appeal and request for finding stays further proceeding, 89 C 413
notice of appeal must be filed within a week even if appeal is delayed, 91 C 383
notice of appeal filed within one week after acceptance of verdict complies with statute; if it falls on Sunday or holiday, file on next day, 91 C 383
notice of appeal from judgment is sufficient whether it has reference to a judgment or motion, 91 C 383
no notice necessary where appeal is taken within the week, 92 C 649
purpose of rule requiring notice of appeal to be filed during summer months is to extend time during which execution will be stayed, 118 C 81
——if no notice filed, execution may be taken out after two weeks and thereafter no right of appeal, 118 C 81
——but where no execution taken out, trial court may grant extension of time to take appeal, 118 C 81

appeal of zoning board not dismissed because its attorney did not sign notice of appeal filed by other appellant, where it joined in later steps without objection of appellee, 127 C 16

§ 20. Finding.

§ 21. ——In General

has same effect on faulty pleading as a verdict, 15 C 533

contrary to estoppel recited, may be disregarded, 26 C 50

statement of facts for advice of Supreme Court is not a judicial finding, 27 C 464, 36 C 131

special finding of facts filed by order of court was not strictly part of record, 31 C 124

on reservation for advice is not strictly a part of record, 36 C 131

finding or motion for new trial amendable as to finding of facts, after time has expired for filing motion, 40 C 90

proceeding by mandamus is action at law within statute de finding by judge where no jury, 41 C 134

of material facts not averred, is of no avail, 41 C 237

on motion in error finding does not estop on new trial, when, 49 C 30

special finding *held* to qualify an inconsistent general finding, showing that latter was intended as a legal result of the former, 49 C 81

on motion in error presumptively states all the facts, 51 C 399

——these constitute part of record and conclude the parties, 51 C 399

facts stated on motion for new trial do not constitute part of record; their office is to present clearly law questions for review, 51 C 399

reversal of judgment on motion in error may or may not set aside finding; depends on whether error affected facts found or not, 51 C 400

on motion in error finding is an estoppel only as to facts contained in it, 51 C 400

——not as to all facts alleged and not covered, 51 C 400

what is to be regarded as a finding under statute, 54 C 118

the facts considered must be the facts as found by the trial court, 54 C 384, 440, 589

may become part of the record under the statute, by order of court, 60 C 15

relation of judge's memorandum of decision and special finding to the finding, 64 C 439, 72 C 624, 73 C 590, 681, 75 C 92, 80 C 433, 86 C 235, 89 C 169

nature and purpose, 71 C 600, 84 C 591

finding that judge was not influenced by secretly-filed brief disregarded, 72 C 207; but see 80 C 315

relation between special finding of facts upon which judgment based and finding for appeal, 72 C 611, 73 C 681, 87 C 608, 97 C 568

facts must be found at time of judgment, or at least during that term, 72 C 611

relation between special finding and finding for appeal, 72 C 612, 73 C 681

in making a finding a judge acts as clerk, 73 C 436

motion to find the facts naturally follows the judgment, 73 C 685

a finding on appeal is admissible to show scope of a judgment which is doubtful on its face, 78 C 430

finding on one trial not conclusive where same facts arise in another, 78 C 430

memorandum of decision not a special finding, 80 C 434, 88 C 141

need not consider ruling on demurrer if same question is raised in finding, 82 C 298

defective statement of title in pleadings is aided by finding, 82 C 567

if finding is altered on appeal so that case in the appellate court is different from one in court below, new trial ordered, 82 C 619

in two appeals record should show pleadings in each case, but one finding is sufficient, 83 C 2

appeal reasonably taken not abatable because assignment ignored finding and related solely to questions on pleading and judgment file, 83 C 27

facts found that are not involved in the issue not matter of adjudication, 83 C 107

reference to document in finding does not make it part of the appeal record, 83 C 111

stipulation of parties not a finding unless adopted by the court, 83 C 686

memorandum of decision not finding; not part of record unless made so by court, 83 C 690, 85 C 261, 89 C 284

court may notice fact within its judicial knowledge even against finding, 84 C 462

what the office of finding of facts is, 84 C 591

statements in draft finding marked "proven" treated as part of the court's finding, 84 C 596, 86 C 536

memorandum of decision may be resorted to on appeal to find what conclusions of law the court drew; not a finding unless made part of the record; judgment file only source of information to what issues court decided in absence of finding, 85 C 261

finding not part of record on appeal from refusal to set aside a verdict, 85 C 333

finding made after judgment, a part of the record of the Supreme Court but not a part of the record of trial court, 85 C 619

——whether it could be part of trial court's record by order of the judge, quaere, 85 C 619
statement in memorandum of decision treated as an expression of a conclusion, not a fact, 86 C 235
no variance if complaint is silent on a matter that finding goes into, 86 C 453
finding should not be incorporated in judgment file; if it is, facts so found are conclusive, 87 C 32
memorandum of decision is not finding of facts nor part of official record unless made so by court, 87 C 608
appellant cannot seize on inadequacy of finding as to a fact supporting claim of law not assigned as error, 88 C 9
statements of trial judge in finding are his finding on question of fact, 88 C 119
if inconsistent with paragraph of draft-finding marked "proven" finding prevails, 88 C 124
——but if inconsistent with exhibits, latter prevail, 71 C 254
——so does parties' own written agreement, 90 C 481
material fact omitted in finding, supplied by reference to pleading and judgment file, 88 C 130
Supreme Court cannot make a new finding, 88 C 130, 382
memorandum of decision cannot be treated as a finding, 88 C 141
evidence supersedes finding in determining what it tended to prove, 88 C 494
commissioner's finding in compensation cases is treated on appeal like finding by the Superior Court; effect of same, 89 C 143, 90 C 444, 539, 91 C 380, 92 C 91
acceptance of distribution by Probate Court is a finding by it of distributees, 89 C 420
parties' written agreement prevails over contradictory statement in finding, 90 C 481
cannot assume that facts were found in absence of any finding to that effect, 90 C 539
finding no part of record of trial court, 90 C 620
general finding in favor of plaintiff means all of the issues so found; special finding for appeal while not so comprehensive, does not reverse it, 91 C 378
judgment is controlled by the finding, 91 C 693
finding that is harmless though in error does not warrant new trial, 92 C 208
cannot import facts by special finding that do not appear in complaint when only sufficiency of the complaint on demurrer is involved, 93 C 160
paragraphs marked "proven" are actually incorporated in formal finding, 93 C 590
function of bill of exceptions in writ of error analogous to that of finding of fact, 94 C 452
is to be read as a whole in connection with memorandum of decision if that be made part of finding, 94 C 533
finding by jury which court does not accept is not part of the case, 95 C 248
statement in finding based on fact already found is conclusion of law, 95 C 273
finding by court ignored if there is already one by committee, 95 C 538
error cannot be predicated on a finding that has no place in record, 95 C 538
making is clerical or ministerial, rather than judicial act; judge, who has passed age limit may make, 97 C 563
findings may not be supplemented by printed evidence, 98 C 372, 807
court will decide case on facts found though incomplete, 98 C 375
duty of party to see that everything material to support his claim is found, 99 C 511
court will not consider finding made on appeal from demurrer sustained in order to pass on validity of municipal ordinance, 100 C 101
finding may not be supplemented by evidence certified on question of setting verdict aside, 100 C 118
when evidence may be examined to supplement incomplete finding, 103 C 598
——or ambiguous finding, 100 C 211
finding which is a conclusion will be so treated though not so called, 103 C 624
when evidence so strong as to induce reasonable belief of existence of fact, it should be found, 104 C 362
that Supreme Court adopts findings of fact for purpose of determining appeal, gives them no additional force on new trial, 105 C 249
facts found outside issues will not support judgment, but if within general issues, will, though not within more specific statement filed, 107 C 484
judgment supported by unattacked finding must stand, 107 C 594
intent or purpose usually a primary fact rather than a conclusion; it must have support in direct testimony or reasonable inference, 107 C 640
obviously inadvertent misstatement in conclusion is of no material effect, 108 C 58
whether fact which does not appear in finding, but is in issue by pleadings, is established by judgment, quaere, 111 C 299
where not supported by pleadings cannot sustain judgment, 111 C 528
that fire was caused by latent defect or faulty installation or both cannot sustain judgment on one of these grounds alone, 111 C 528
written agreement will prevail over inconsistent statement in finding, 111 C 709
exceptions should be taken to finding, not to refusal to correct, 113 C 145

to determine claim that on evidence court could not reasonably have reached conclusion that defendant was guilty of murder in first degree, Supreme Court must look beyond finding to the evidence, 120 C 219

——but finding serves purpose of showing conclusions court reached from conflicting evidence, 120 C 219

finding in judgment file of issues on count of fraudulent conveyance for defendant P was sufficient finding of all relevant issues in her favor, 120 C 247

——had plaintiff desired special finding on any particular issue he should have made motion for it, 120 C 247

Supreme Court may properly have recourse to memorandum of decision to ascertain basis of legal conclusion of trial court, 120 C 384

——but where statement in it differs from that in finding, latter must prevail, 120 C 384

that summary of evidence in record states that certain evidence was offered does not mean that court accepted it as true, 121 C 346

Liquor Control Act; Supreme Court cannot find facts nor in first instance draw conclusions of fact from primary facts found but can only review such findings to see if they are legally and logically found, 121 C 696

——and where state referee did not make finding sufficient to enable trial court to enter judgment, Supreme Court declined to entertain reservation, 121 C 697

rulings in course of trial to be determined by finding alone, 122 C 565

——recourse will not be had to evidence printed to secure corrections in it or to review ruling or motion to set verdict aside, 122 C 565

——otherwise where finding is manifestly incomplete, 122 C 565

when finding fails fully to state circumstances of ruling, court may resort to evidence brought before it by appellant for other purposes, 122 C 608

findings based upon observation of witnesses in courtroom are in same category as findings based on view of premises or property, 123 C 88

in general finding cannot be supplemented by recourse to evidence printed for purpose of securing corrections in it, 123 C 219

——but in determining correctness of rulings when appellant fails to include relevant matter in finding and that matter appears in transcript which he asks to be examined, Supreme Court will use information thus acquired, 123 C 219

——when application of this principle revealed that certain evidence instead of having been admitted was in fact excluded, no basis remained for appellant's claim of error, 123 C 219

statements of fact in a memorandum of decision do not take the place of a finding, 125 C 281

purpose of special finding is to place upon record material facts upon which judgment is based, 125 C 615

——other matters have no place in it but can only be presented by finding made for the purpose of an appeal, 125 C 615

admission made in counterfinding cannot bind court in making its finding, 128 C 113

§ 22. ——When Finding Necessary

without finding, questions as to admission of evidence and the like cannot be raised, 66 C 265, 84 C 1, 87 C 608, 89 C 382, 90 C 126

in general, 71 C 600, 84 C 591

not necessary to review ruling on demurrer, 75 C 641

transcript of evidence not sufficient to raise questions as to rulings of trial court on evidence and the like, 82 C 547, 87 C 608

——nor is it sufficient as to charge, 88 C 382

no finding necessary in appeal on nonsuit, 83 C 316

fraudulent purposes are not subject to review in absence of the evidence and subsidiary facts, 83 C 691

statement or finding giving rulings or holdings of trial court necessary to present them on appeal, 84 C 1

appeal that does not challenge ruling and charge does not raise question as to whether a libel was privileged, 87 C 220

certification of evidence and rulings as a part of the record sufficient for an appeal from denial of motion to set aside verdict, but not for an appeal from the judgment, 87 C 328

——a finding of what occurred upon the trial, made according to statute, necessary, 87 C 328

finding of facts underlying interlocutory decree for an accounting need be made once only; not another after accounting, 87 C 400

facts not apparent on record must be taken advantage of by appeal after finding, 87 C 608

facts material to issue alone appear of record; other facts to make apparent error must appear in finding, 87 C 609

stenographer's notes do not supply place of finding, 87 C 609

an appeal must give reasonable notice of grounds of error, 88 C 60

no finding necessary on appeal from decision setting verdict aside, 88 C 247; but see 85 C 333, 86 C 282, 87 C 333

——only certification of evidence supplied by appellant at his own expense, 88 C 247

finding necessary to revise error in a charge, 88 C 382
no finding need be made if request does not contain question of law, 88 C 655
cannot depend on evidence but should have a finding if a review of rulings on evidence desired, 89 C 383
by failure to have finding of actual acreage in land, plaintiff's grievance that he was taxed on what he did not own did not appear of record, 89 C 435
on appeal from setting aside verdict as against evidence cannot take advantage of erroneous admission of testimony; must ask directly for revision; finding necessary, 90 C 126
certificate of evidence alone sufficient to determine error in directing verdict; if ruling on evidence attacked finding should usually be made, 91 C 430
to pass on motion to stay proceedings, must have finding of facts, 91 C 553
ruling on evidence must appear of record, to be considered, 94 C 244
when all the facts are apparent on the record, no finding necessary, 94 C 281
finding has no place on appeal from action on committee's report; is disregarded, 95 C 538
whether damages claimed to be special ought to have been allowed under the complaint presents a question of law requiring a finding, 95 C 692
——so question whether agreement restraining one from conducting store was superseded by bill of sale, 95 C 692
finding necessary to present rulings on evidence; printed transcript not enough, 96 C 30, 637
——so question as to correctness of charge, 96 C 334
——or failure of court to follow requests, 96 C 637
proposed amendment of reasons of appeal if based on charge, without any finding, is properly refused, 97 C 281
complaint cannot be made as to failure to charge on matter not presented by finding, 98 C 250
ruling on evidence not presented in finding disregarded, 98 C 305
to determine whether prima facie case of conspiracy has been made out so as to permit declarations of codefendants, finding is necessary to present state of proof at certain stage of trial; printed evidence cannot be resorted to, 98 C 814
not necessary on appeal from judgment on demurrer, 100 C 101
duty of judge to make finding whenever necessary to present questions of law, 101 C 733
refusal to grant allowance of attorney's fee to employer not reviewable where relevant facts not found, 104 C 504
in criminal case tried to the court, 105 C 326
finding necessary on appeal from judgment on plea to jurisdiction, motion to quash or challenge to array, 106 C 702
action in setting aside verdict for improper remarks cannot be reviewed in absence of finding of facts, 108 C 285
necessary to present ruling on evidence or any other ruling during trial, 108 C 286
——Supreme Court cannot take facts from evidence, or charge, or memorandum of decision not made part of finding, 108 C 286
——practice of making memorandum discussing facts part of finding discouraged, 108 C 286
——what necessary to present question of improper argument, 108 C 286
when sole question presented is whether trial court erred in setting aside verdict no finding is required, errors in rulings of court adverse to plaintiff being irrelevant, 108 C 680
——like privilege to defendant's bill of exceptions should be given plaintiff by statutory change, 108 C 680
finding of subordinate facts in criminal case tried to court is material only if claim is made that they do not support its conclusion, 109 C 29
necessary to present claimed errors as to mispleading or in rulings on evidence and charge in jury case, 109 C 732
rulings on trial not open to review in absence of finding and separate appeal, 109 C 732
finding of facts by referee necessary in amendment to application for bail, 109 C 738
is necessary to present claim that no opportunity was given to plead further or offer evidence after allowance of amendment on trial, 113 C 404
necessary to present claim that sentence in criminal case was excessive, 113 C 786
finding is necessary to present question of improper refusal of court to receive requests to charge, 114 C 348
in appeal from charge to jury finding of facts necessary; no provision therefor except in appeal from final judgment; appeal from setting aside verdict affords no basis for review of charge, 115 C 678
appeal from verdict and failure of trial court to set it aside is no basis for finding to present errors occurring on trial, 115 C 722
not required in petition for new trial; Supreme Court cannot resort to it if it is made, 116 C 649
in absence of finding of facts judgment on hearing in default merely for nominal damages cannot be upset, 117 C 259
provisions defining duties of trustee could

only be added to uncertain trust upon basis of finding as to what was intent, 117 C 334
ruling on evidence assigned as error must appear in finding, 117 C 665
proper finding necessary to review ruling of court denying motion to reopen case before state referee for additional evidence, 118 C 294
finding by trial court improper where referee makes report and court orders hearing on status of claim, since question presented to court was merely question of law as to proper conclusion to be drawn from facts found by referee, 118 C 586
not proper where only question involved is denial of motion to set aside verdict, 118 C 709
assignments based upon court's refusal to charge as requested disregarded where requests not made part of finding, 119 C 310
where motion for new trial on newly discovered evidence is submitted on affidavits without hearing of evidence, no basis for finding, 120 C 370
where no error claimed in charge, finding was superfluous, 121 C 201
where ruling which was basis of appeal was presented on face of record, no finding necessary, 122 C 522
only way question of change of venue could be presented is upon finding, 122 C 538
whether court erred upon facts in restoring case to the docket could only be reviewed on finding, 123 C 168
——but whether it had jurisdiction to act in the premises and whether remedy was proper, presented upon the face of the record and required no finding, 123 C 168
practice of statutory court in murder case to make finding of subordinate facts upon which it based its conclusion, 123 C 667
claims of error apparent on record may be presented without a finding, 125 C 467 (footnote)
——so where plaintiff's reasons of appeal, in appeal from allowance to prosecute appeal in divorce action, was that court erred in failing to hold that on face of record appeal of defendant was without merit, motion to erase denied, 125 C 467 (footnote)
claimed error in court's refusal to permit counsel to argue question of fact raised by evidence lacked support by finding, 126 C 664
jury trial of issue in equitable action, 127 C 149
where reason for setting aside verdict is other than because it is against evidence, a finding is necessary, 127 C 680
where it is assigned as error that court found on all evidence that defendant was guilty, finding serves no purpose but to show conclusions by court as to matters where there might be reasonable difference of opinion, 128 C 42
where referee makes report and court hears no evidence, no basis on which court can make finding; can only correct report, 128 C 416

§ 23. ——Right to Finding; Action by Judge

acceptance of committee's report by court *held* a sufficient finding of facts reported, 29 C 577
neither Superior nor Supreme Court can find facts on mere evidence submitted by committee; committee must find the facts, 52 C 426
statute authorizing judge to make finding after term of office has expired, *held* valid, 53 C 237
——whether judge would not have such power under act of 1882, quaere, 53 C 238
facts may be found by inference, 64 C 479, 66 C 36, 78, 75 C 144, 76 C 465, 78 C 621, 79 C 74, 80 C 335, 86 C 82
——as from failure of party to offer evidence, 81 C 116
——or to adopt certain course, 79 C 586
court will not order finding if request not properly made, 67 C 170, 78 C 642, 90 C 553
if waiver exists, court should find it, 67 C 589
judge may believe one witness against several, 73 C 607
unsuccessful motion to reopen judgment does not impose on judge obligation to make finding, 81 C 249
——though had motion to reopen been made before time expired for giving notice of appeal and request for finding, it might have operated to extend time therefor, 81 C 249
if judge has reasonable belief as to a fact, he should find the fact, 85 C 441
if finding made on judgment for accounting and no appeal taken, judge need not honor request for finding as to same facts after accounting, 87 C 400
if death of judge prevents a finding, party may move for a new trial, 87 C 608
one is entitled to a finding even if court says there is no question of law to be reviewed, 89 C 284
judge may find fact taking place before him, not of record, as juror's assent to verdict, 90 C 381
trial judge need not make finding unless request is seasonably made, 90 C 553
application to require trial judge to make a finding not civil process; sufficient if served within time for filing pleas in abatement, 95 C 690
remedy for refusal to make is not appeal, but application to Supreme Court, 97 C 279
judge may refuse finding if request and draft not in accordance with rules, 98 C 811

remedy for refusal of trial judge to make finding, 99 C 22
judge need not make finding where request and draft are defective, 100 C 524, 103 C 754
duty of trial judge to make finding; order for him to do so by Supreme Court, 101 C 733
refusal of trial court to make finding; remedy, 102 C 702
right to "special finding," 103 C 41
duty of judge to make finding where ruling subsequent to final judgment is basis of appeal, 103 C 265
that trial judge disbelieves witnesses who deny a fact, is no ground for finding it to exist, 104 C 493
in jury case, where neither party files statement of claimed proofs, finding should be refused, 104 C 740
failure to prove fact does not warrant positive finding concerning it, 107 C 329
trial judge should not refuse to add established facts merely because he thinks them immaterial, 107 C 630
if trial court draws inference as to motive for crime, it should state it as fact, not as conclusion, 107 C 632
court may discredit all or part of witness' testimony or adopt one of two conflicting statements, 109 C 343
court may not find fact contrary to witness' testimony where not supported by other evidence or appropriate inference, 109 C 343
whether witness has scruples or conscience against taking oath is not for judge to find, 109 C 711
——should be accepted from statement of witness without further proof, 109 C 711
trial court rarely justified in refusing to find claimed fact which was proven, because he deems it immaterial, 111 C 538
no rule of law forbids the resting of one inference upon facts determined by other inferences, 113 C 333
——enough if probability of each inference was sufficient to induce reasonable belief in an impartial mind, 113 C 333
facts need not be supported by direct evidence; sufficient if circumstances fairly warrant an inference, 114 C 172
proper to make finding that there was no evidence as to certain features where this will make situation clear, 115 C 473
court not required to include long transcript of evidence to present certain rulings where they were not referred to in request for finding or assignment of error, 116 C 389
duty not only to find material facts proven but to make manifest the basis of its decision, 116 C 402
——when this is not done there is no means of determining that attack cannot be made on conclusion, 116 C 402
when request for finding not filed within proper time trial court will not be ordered to make finding, 117 C 1
——time for filing request extended by motion to reopen judgment to permit further evidence, 117 C 1
trial court rarely justified in failing to find facts which have been proven and which party asks be incorporated because it deems them immaterial, 118 C 334, 119 C 428
——same principle applies to claims of proof in jury cases, 118 C 334
court not restricted to statement of such matters only as appear in draft finding or counterfinding, 119 C 347
where no witnesses were produced in support of motion for new trial for newly discovered evidence, there is no basis for a finding, 119 C 698
when court deems it necessary, in order to present certain issues on appeal, that finding be made, it is its right and may be its duty to make it, though parties have not requested it, 120 C 120
——"chronological memorandum" treated as such finding, 120 C 121
court not required to make finding based upon evidence which was admitted but which was on subject outside issues raised by pleadings, 120 C 184
evidence obtained by inspection of place of accident may be taken into account in making up finding, 121 C 88
proper method to cause trial court to make finding is by motion to Supreme Court, 123 C 108
——its failure to do is not assignable as error, 123 C 108
in finding facts favorable to party court not confined to testimony offered by him but may gather facts from that of his opponent, 123 C 459
court has right to believe part of testimony of witness and disbelieve rest, 123 C 459
where only two witnesses, court need not accept testimony of either, in its entirety, 123 C 586
trial court from observation of plaintiff may infer motive and personal characteristics, 124 C 380
admission made in counterfinding of claims of proof in draft finding cannot bind judge, 125 C 37
——finding as made is his finding, subject to correction, 125 C 37
where no evidence offered there is no basis for a finding, 125 C 284
finding of facts for appeal presupposes it has been properly taken, 128 C 295
——special finding under statute is proper only upon rendition of judgment; cannot be claimed de interlocutory ruling, 128 C 295

court may properly make finding as to something occurring in its presence, as perjury of witness, 128 C 425

§ 24. ——Request for Finding; Draft Finding

court may make finding even though request be not filed in time, 70 C 500, 76 C 454

——but Supreme Court will not order it to do so, 66 C 551, 67 C 170, 78 C 642

paragraphs marked "proven" regarded as found, 73 C 720, 79 C 294, 84 C 610, 85 C 383, 86 C 540

——if not marked "proven," request cannot be used, 79 C 535

——but where judge's memorandum of decision showed how they would be marked, court regarded them, 64 C 462

——failure to mark, how remedied, 78 C 179

——court need not mark, if request not properly framed, 73 C 682

——or if paragraphs only contain evidence, 78 C 171

——or if facts found would not be materially altered, 91 C 191

——change of marking should appear of record, 73 C 682

——failure to mark not ground for reversal, 67 C 506

if judgment is entered in July or August, may be filed in first two weeks of September, 78 C 642

must state clearly questions to be reviewed, 79 C 136

——but sufficiency is for trial court, and if it makes finding, Supreme Court will not abate appeal, 66 C 551

may be filed in July and August; effect, 79 C 434

facts in draft finding available on appeal only if authenticated, 79 C 535

only claims of law stated in draft finding will be considered, 80 C 596, 85 C 572, 86 C 453, 560, 88 C 109

requirement as to stating matters to be reviewed to be observed in letter and spirit, 81 C 84, 85 C 567, 88 C 658

motion to reopen judgment as extending time for filing, 81 C 249

function of request; request for finding in review of nonsuit refused if evidence not set out, 82 C 132

draft finding must set out all the evidence when that is necessary, 82 C 132

time runs from pronouncement of judgment, not making of judgment file, 82 C 376, 386, 89 C 413

statement in draft finding marked "proven" has same force as a finding; unnecessary to ask for addition of such, 85 C 384

can only present questions raised in request for a finding, 85 C 613

draft finding must contain request on the point to be reviewed and a statement of the question of law to be raised, 86 C 552

court may refuse to incorporate conclusion of law necessarily arising from facts found, 87 C 248

Supreme Court will not send case back to have paragraphs marked, if it could not avail appellant, 88 C 22

if finding inconsistent with paragraph of draft finding marked "proven" former prevails—proper procedure, 88 C 124

no finding need be made if request for same does not contain a statement of question of law to be reviewed, 88 C 655

paragraphs of draft finding marked "proven" should be read with same paragraphs of finding, 89 C 243

draft finding includes only facts claimed to be established by evidence, 90 C 444

——statement that testimony of witness is true has no proper place in finding, 90 C 444

trial judge need not make finding unless notice of appeal and request are seasonably filed, 90 C 553

——date of judgment as given in judgment file is conclusive, 90 C 553

draft finding not recommitted to have paragraphs marked "proven" or "not proven," 91 C 191

failure to include claims of law cannot be availed of on final argument, 92 C 668

conflict between finding and draft finding marked "proven" and "not proven" which does not affect merits, immaterial, 92 C 668

paragraphs marked "proven" to be treated as incorporated in finding, 93 C 590

precise language need not be followed; sufficient if fact is found in effect, 93 C 614

reservations should not contain request to correct finding of compensation commissioner, 95 C 160

must comply strictly with the rules, 98 C 165, 812

draft finding must set forth rulings on evidence, 98 C 308

request must contain rulings on evidence complained of; failure properly to state rulings not remedied by evidence printed to correct finding, 100 C 86

draft finding is prerequisite to duty of court to make finding, 100 C 524

if request is so defective that court cannot act on it judge should give counsel chance to replace it with another, 100 C 524, 103 C 755

opportunity to correct error in draft usually granted, 100 C 524

if facts in request are found in effect, it is enough, though exact language not followed, 101 C 562

each paragraph of draft to be treated as a

whole, and may be refused if any part is bad, 103 C 285
request must contain direct statement of questions of law, 103 C 754
draft must contain all facts essential to review of questions of law, 103 C 754
in jury case, where neither party files statement of claims of proof, appeal must be dismissed, 104 C 740
rule that questions of law to be reviewed shall be stated in draft finding may be waived by court, 109 C 690
refusal to make finding where appellant, who was not member of bar, mingled questions of law to be reviewed with facts, *held* too literal construction of rule, 109 C 690
request must set forth rulings on evidence to be reviewed, 111 C 47
only questions of law listed in request for finding will be reviewed; purpose of requirement, 114 C 71
where claim is made that party in argument attacked credibility of own witness, testimony should be reduced to brief narrative account, 114 C 226
transcript presenting rulings on evidence to be certified by official stenographer, 116 C 389
where judgment rendered April 19th, motion to reopen April 23rd and denied May 6th, request for finding filed May 20th not too late, and motion directing trial court to make finding granted, 117 C 1
——effect of motion to reopen was to suspend time limited for filing appeal and request for finding, 117 C 1
addition to finding of facts included in draft finding is not required because of admissions in counterfinding, 125 C 180

§ 25. ——Form and Contents Generally; Presenting Rulings on Evidence

"the court are of opinion," *held* a valid finding, 1 D 238
court cannot infer additional facts from those found and reported by committee, 42 C 517–524
embracing immaterial facts does not necessarily render decree erroneous, 47 C 588
of negligence merely, is unavailing unless facts upon which it rests appear, 51 C 393
facts should be directly and positively found, 54 C 122
Supreme Court will not countenance argumentative finding, when, 54 C 122
writing facts found against paragraphs of request, treated as finding, 66 C 56
when proper to find that no evidence offered as to matter, 68 C 345
should find facts, not that they probably exist, 69 C 341, 73 C 424, 470
"I do not find" certain specified facts, construed, 69 C 349
if record fails to show why evidence was excluded and it is inadmissible on any ground, ruling stands, 69 C 512, 80 C 302
——error in ruling on evidence must be supported by the record, 72 C 315, 76 C 497
——thus, where claimed error is exclusion of evidence on cross-examination as not germane to direct, latter must appear, 66 C 250, 90 C 382
facts involved in conclusion of law should be found, 69 C 575
claims of law should be stated as made on trial, 72 C 10
——but claim of law made too late to avail need not be stated, 75 C 679
rulings on evidence should be concisely stated, 73 C 548, 83 C 500
alternative finding disregarded, 74 C 720
should not contain opinion as to or conclusions of law, 77 C 397, 87 C 248
——but if conclusion is based on presumption or rule of law this should appear, 72 C 160
should not find evidential facts, 78 C 171, 84 C 202, 591, 88 C 109, 91 C 226
——or subordinate facts, where ultimate conclusion is purely one of fact, 74 C 247, see 81 C 84
incorporating another finding by reference, 78 C 430
finding that matter not involved in scope of partnership settlement sufficient without finding scope of settlement, 79 C 273, 276
contents on appeal from judgment after remonstrance to committee's report, 80 C 248
should contain only matter necessary to review questions raised, 80 C 598
constructive fraud sufficiently appears, if necessarily implied from facts found, 81 C 434
statement of subordinate or evidential facts necessary, also legal principles, if propriety of trial court's action is considered on appeal, 81 C 532
cannot incorporate reasons for excluding evidence after trial; must be made at the trial, 81 C 638
ruling and conduct of court must be set out in finding for an appeal, 82 C 547
mere reference to exhibit does not incorporate it, although it is printed, 83 C 111
to appeal ruling on evidence state question briefly; printing large mass of testimony unnecessary and unjustified, 83 C 500
rulings of court not considered in absence of finding or bill of exception laying foundation, 83 C 690
evidential statements of facts should not be in finding, 84 C 202
statements of evidence and excerpts of stenographer's notes have no place except to show relevancy of evidence, 84 C 591
in court cases finding embodies conclusions as to facts ultimate or subordinate, 84 C 591
direction that transcript of evidence and rul-

ings be printed is order that it be part of record but not at expense of the State, 87 C 328
facts relative to rulings of trial court should be set out only in finding, 87 C 609
finding states ultimate not evidential facts; statement of what witness testified to, improper, 88 C 109
statement by trial judge in finding are his findings unless contrary indicated, 88 C 119
where same ruling is made repeatedly during trial, finding should contain single ruling only, 88 C 260
facts found outside of the allegations of the complaint immaterial as case was decided on facts within the complaint, 88 C 448
immaterial facts need not be incorporated in finding, 88 C 720
record should show direct evidence or that it was proper cross-examination, otherwise no foundation for claiming error in excluding the evidence, 90 C 382
workmen's compensation case, 90 C 444, 91 C 524
finding should state the question, objection, exception, and answer to present ruling on evidence, 90 C 612, 94 C 150
essential facts not alleged cannot be found, 90 C 618
should not find evidence, 91 C 226
record must show claims as to evidence and basis of ruling or court cannot find error, 91 C 431
——and, if ruling is in discretion of court, must show cause and abuse of discretion, 91 C 431
in appeal of workmen's compensation cases no need for Superior Court to make commissioner's finding part of the record, 91 C 525
if court has learned facts by personal inspection which he cannot include in finding, he should so state, 92 C 546
court cannot find error in excluding question on cross-examination unless apprised as to direct examination, 93 C 126, 94 C 150
——and of the answer to the question, 94 C 150
judge may certify in addition to evidence requested, what he thinks is material, 93 C 204
incidental finding of fact not alleged in complaint harmless if judgment is not predicated on it, 93 C 545
paragraphs of draft finding marked "proven" considered as part of finding, 93 C 590
finding does not have to be in language of request, 93 C 614
proper contents to raise question of ruling on evidence, 94 C 150, 96 C 34, 274
finding states material and relevant facts; same for Workmen's Compensation Act, 94 C 260
responsibility of parties for vague or uncertain statements, 94 C 460
immaterial if conclusion of law or mixed law and fact are in finding, if they have to be decided in passing on case, 94 C 533
expression of trier's belief or opinion has no place in finding, 94 C 618
purely evidential facts need not be detailed in the finding, 94 C 661
paragraphs of finding stating conclusion of law rather than facts harmless when, 95 C 11
finding good that presents only operative or ultimate fact, 95 C 11
need not find facts that cannot materially affect the result, 95 C 11
evidence printed upon motion to set verdict aside may be referred to, to supplement finding as to ruling upon evidence, 96 C 30
only rulings on evidence appearing in finding regarded, 96 C 637, 98 C 305
should find facts not evidence, 96 C 600, 97 C 116
——should not include correspondence of parties, 97 C 122
in case tried to court, not proper to find that "evidence was offered to prove certain facts"; if facts are proved court must find them, 97 C 488
contents where relief is asked against failure to give notice for renewal of lease at time provided, 97 C 627
use of evidence printed on appeal from action on motion to set aside verdict, to help out finding as to ruling made, 97 C 667
should not contain evidence or evidential matter, 98 C 10, 100 C 282, 105 C 73, 106 C 423, 665, 107 C 716
how rulings on evidence should be presented, 98 C 163, 807, 105 C 249
——if rules not complied with court may disregard, 98 C 807
rulings on evidence must be presented as rules require, 98 C 224
if finding suggests question as to correctness of ultimate conclusion the subordinate facts should be found, 98 C 381
requisites to present question as to prima facie showing of conspiracy sufficient to admit declarations, 98 C 807
claims of law made by appellant should be stated; remedy for omission is motion to correct, 99 C 124
need not be in language of draft, 100 C 470, 101 C 562
intention involved in change of domicil should be set forth as subordinate fact, not conclusion, 100 C 607
finding of fact should be stated as such, not as conclusion, 100 C 610
finding de ruling on evidence should show its nature and materiality and all surround-

ing circumstances, 100 C 611, 102 C 410, 103 C 453
court will not assume ruling admitting question to be harmful where answer does not appear, 100 C 680
not error for court not to incorporate memorandum of decision in finding, 102 C 152
need not contain facts admitted in pleadings, 102 C 476
all circumstances surrounding ruling on evidence must appear, 102 C 692
special finding made part of judgment file as basis of appeal; should contain only ultimate facts, 103 C 45
trial court should say which of two conflicting rules as to damages it adopted, 103 C 390
upon appeal from denial of motion for change of venue, finding should contain all relevant facts, 103 C 453
where all evidence printed it may be used to supplement defective statement in finding of ruling on evidence, 103 C 598
prescribed forms and rules to be followed, that questions may be fairly presented, 104 C 121
must appear from finding that answer to objected question was responsive or harmful, 104 C 366
rulings on evidence, referred to in draft finding, cannot be considered where draft not printed in record, 104 C 501
finding must contain ruling and surrounding circumstances, 105 C 249
finding must show materiality and relevancy of excluded evidence, 105 C 326
in criminal case tried to court, should contain conclusions of law and fact reached by trial judge, 105 C 326
exclusion of letter not reviewable on appeal unless marked for identification and printed in record, 105 C 539
finding should not contain indefinite terms like "until the fall of each year" where time is in question, 105 C 571
ground of objection made to the admission of evidence must appear in the record, 105 C 625
finding that plaintiff was induced by "some or all" of defendant's fraudulent representations, is too general, 106 C 41
when relevant and material, foreign statute should be incorporated in finding, 106 C 264
finding should not contain hypothetical statements, 106 C 460
finding that certain claims were not made on trial, 106 C 512
should set forth facts, not evidence, 107 C 1
——if ultimate fact is derived by inference from subordinate facts, latter should be stated, 107 C 1
——if drawn directly from evidence, that should not be stated, 107 C 1
——where final determination depends on application of law to facts, all ultimate facts properly to be considered should be included, 107 C 1
where party claims error in remarks of court in examining witness, it is necessary to have transcript of examination made a part of finding, 107 C 246
court should not refuse to find facts merely because it deems them immaterial, 107 C 630
in determining whether ruling on evidence was harmless, court is limited to facts found and cannot consult evidence attached to motion to correct, 108 C 205, 110 C 407, 113 C 209
memorandum stating or discussing facts should not be made part of finding, 108 C 285
what necessary to present question of improper argument, 108 C 286
finding necessary to present ruling on evidence or any other ruling during trial, 108 C 286
only rulings during trial or statements in charge properly included, 109 C 164
——not corrections of finding, 109 C 167
appeal from ruling on evidence must be tested by purpose for which question was claimed at trial as disclosed by record, 109 C 292
to obtain ruling on exclusion of exhibit, it should be marked for identification, 109 C 668, 112 C 421
presenting a number of claimed errors in rulings on evidence in one paragraph of finding improper, 110 C 126
rulings on evidence are to be tested by the finding not by evidence printed to secure correction of finding, 110 C 128
rule that finding shall contain claims of law substantially as stated in request, applies only to court cases, 110 C 217
memorandum of decision should not be made part of, 111 C 537
each ruling should be stated in a separate paragraph with showing of relevant circumstances, 112 C 421
correctness of rulings on evidence must be determined upon basis of situation disclosed by finding, 112 C 438
——hence when evidence admitted on promise to later connect it and it does not appear this was not done, no error, 112 C 438
where letter offered in evidence was excluded and does not appear of record, no ground to pass upon error in excluding it, 113 C 554
where finding does not contain answers to questions objected to, rulings will not be considered on appeal, 114 C 64
where error in ruling on evidence is claimed, finding must state question, objection, exception and answer, if any, 114 C 165

several rulings on evidence should not be stated in one paragraph with general assignment of error as to it, 114 C 165
not necessary that statements in finding be supported by direct evidence; inference or conclusions may be stated, 114 C 172
improper to include long excerpt from testimony for purpose of claiming that argument attacked credit of party's own witness, 114 C 229
several rulings on evidence should not be included in one paragraph, 114 C 719
where no claim of contributory negligence was made at trial and judgment on all issues was for plaintiff, finding of due care unnecessary, 114 C 725
finding that fact was not established by evidence and conclusion that evidence failed to overcome prima facie showing made by records not objectionable as mere statement of evidence, 115 C 50
claims made in draft finding not brought orally to the attention of trial court and not contained in finding as claims of law will not be considered, 115 C 452
proper to find that there was no evidence on certain matter where this will make situation clearer and avoid unfair inferences, 115 C 473
court justified in not including transcript of evidence in finding for presentation of rulings on evidence where rulings were not referred to in statement of questions to be reviewed in request for finding or in assignment of error, 116 C 389
duty of court not only to find material facts proven but to make manifest the basis of its decision, 116 C 402
——when this is not done there is no means of determining that attack cannot be made on conclusion, 116 C 402
claimed errors in admitting questions over objection not considered where finding does not show answers made to them if any, 116 C 549
rulings on cross-examination; findings as to nature and scope of direct on subject involved not as informative as they should have been, 116 C 593
should state facts not testimony, 117 C 161
stipulation, filed in place of finding, should have contained statement of conclusions of court and claims of law of appellant, 117 C 307
brief summaries of testimony of particular witnesses have no place in, 117 C 696
where appeal is from refusal to reopen case and evidence on first hearing is in record, to secure corrections of finding, it may be incorporated by reference in finding to review ruling refusing to reopen case, 118 C 295
function of finding to state facts not evidence, 118 C 322
ruling on evidence must be predicated upon question objected to and excluded, 118 C 687
finding should not include purely evidential facts, 120 C 602
inclusion in one paragraph of finding of numerous rulings with assignment of error referring generally to them, violates rules, 123 C 50
finding that certain facts are highly suggestive of and point to certain conclusion improper, 123 C 429
——if conclusion proven it should have been so found, 123 C 429
statement of circumstances which may possibly or perhaps have happened have no place in finding, 123 C 432
generalities as to reactions of human nature in a given situation hardly a basis for a finding, 123 C 433
finding did not afford information as to scope of direct examination necessary to test the conclusion, as not within it, of question on cross, 123 C 458
ruling on evidence, admitted over objection, will not be considered where finding shows no answer thereto, 124 C 15
facts as to various causes of specific injury and relative proportion of cases due to these causes are evidential and have no place in finding where only effect was as bearing upon credit to be given expert witnesses who testified, 124 C 241
statements summarizing testimony of witness have no place in finding, 124 C 241
inferences drawn from facts in evidence, if reasonable, are proper, 124 C 255
appellant could not raise claims of error on trial to court on basis of finding adapted to raise only issues having to do with trial to jury, 124 C 571
when relevancy or materiality of evidence cannot be understood without knowledge of what preceded or followed, brief statement of such facts should be made and, if necessary, a sufficient excerpt from stenographer's transcript, 125 C 572
——latter method should not be used if statement will suffice, 125 C 572
——finding which simply presents a series of excerpts without finding of circumstances, insufficient, 125 C 572
where nothing in record to show what direct examination was, exclusion of question as improper redirect examination cannot be reviewed, 126 C 364
improper to state several rulings on evidence claimed as error in single paragraph of finding, 126 C 391
in order to find error in rulings on evidence it must appear in the record, 127 C 155
where finding failed to disclose purport of testimony plaintiff sought to contradict by copy of defendant's report of accident, no

error can be found in excluding report, 127 C 291

essential that conclusions should be stated in finding and they can be tested only by subordinate facts, 127 C 402

purpose of preliminary statements to rulings on evidence is to present framework for proper understanding of ruling, 127 C 595

Supreme Court, in justification of ruling on evidence, resorted to evidence to supplement incomplete finding as to circumstances under which ruling made, 129 C 11

memorandum of decision should not ordinarily be made part of finding; illustration of unfortunate results. 129 C 438

ruling allowing plaintiff to withdraw a count could not be reviewed where nothing in finding as to circumstances under which it was made, 129 C 472

rulings on evidence improperly set up; numerous exceptions taken to ruling with nothing in brief to indicate those on which reliance placed, 129 C 690

where qualifications of expert not fully stated in finding but appeared in evidence at length, Supreme Court referred to latter, 129 C 691

§ 26. ——Finding in Jury Cases; Claims of Proof; Charge

contents of, on jury trial, 77 C 394, 83 C 320, 84 C 1

strictly speaking, no finding of facts in trial to jury, 83 C 320, 84 C 1, 90 C 41

in jury trial judge can only find that the parties offered evidence to prove and claimed to have proved certain facts, 84 C 1

where issue has been withdrawn after evidence has been offered on it, the finding on appeal should show it; whole charge need not be given, 85 C 333

this court cannot rule on instructions in absence of evidence bearing on matter, 86 C 275

finding in jury trial made like one in court case is wrong but no error if no one is injured, 86 C 282

in jury cases narrative of trial by judge is a finding, 88 C 136

where error is claimed in failure to charge as requested, 88 C 164

whether instruction was asked for and was relevant is determined from finding, not testimony, 88 C 164

should state what parties offered to prove and facts admitted by both, 92 C 154

charge to jury used to interpret finding, 92 C 261, 604, 93 C 446

statements in a charge with reference to testimony assumed to be correct, 92 C 604

statement that plaintiff offered evidence to prove that defendant's motorman saw the plaintiff at some time before he was hit, warranted, 95 C 724

party may include in his statement as to evidence he offered matter derived from evidence offered by opponent, 96 C 402

only requests to charge appearing in finding are regarded, 96 C 637

nature and purpose, in jury case, 97 C 322

where only one point in charge is in issue, is improper to print it all, 97 C 419

failure to charge as to matter not mentioned in finding is not open on appeal, 98 C 250

requisites in jury case, 98 C 614, 100 C 524, 108 C 126

states only the claimed proofs of the parties, 99 C 149

charge to be tested by finding alone, without reference to evidence printed for other purposes, 99 C 680, 106 C 302, 107 C 72, 108 C 632, 116 C 32, 52, 117 C 551

in absence of exact testimony court assumed that it would support charge as to extent of admission of agency, 100 C 542

where only part of charge is in record, court will not assume that necessary instruction was omitted, 102 C 635

difference between finding in court and jury case, 104 C 660, 108 C 454, 109 C 29

should be complete enough to present all questions of law, 104 C 660

finding should not contain ultimate facts as to character or testimony; will be stricken out by Supreme Court on its own motion, 104 C 660

in jury case where finding is not attacked jury will be deemed to have found each fact claimed by appellant, 105 C 49

finding should set out all claims in support of which evidence was offered, 105 C 366, 113 C 674

request to charge must appear in finding, 106 C 167

finding necessary to present errors in charge, rulings on evidence, or any other ruling in case; court will not take facts from evidence or any other part of record, 108 C 285

statement of fact in court's charge, not in finding, cannot be considered on appeal, 109 C 100

finding in jury case is narrative of facts claimed to have been proved, made for purpose of presenting claimed errors in charge or rulings, 110 C 218, 119 C 392, 125 C 711

in testing charge in criminal case, court assumes jury might have found facts as claimed by accused, 110 C 309

only function of presentation of facts parties claimed to have proved in jury case is to determine errors in charge, 112 C 521

determines no facts but only that certain evidence was offered, 113 C 145

statement in finding in jury case of a conclusion as to causal connection is improper, 115 C 115
is not determination of facts; is narrative statement of evidence offered and claims of proof, 116 C 150
——sole purpose is to enable presentation of error in charge and rulings of court, 116 C 150
certificate of official stenographer making correction in printed transcript proper, 117 C 5
——such correction should be submitted to trial judge for his certification, 117 C 5
is not determination of facts, but statement in narrative form of evidence offered and claims of proof, to present claimed errors in charge and rulings of court, 118 C 335, 119 C 392, 125 C 180
——should be sufficiently complete in detail to fully present these, 118 C 335
——court rarely justified in failing to find claims of proof which party asks to be incorporated because it deems them immaterial, 118 C 334
charge to be tested by finding alone, without reference to evidence printed for other purposes, 118 C 336, 680, 119 C 66, 279, 120 C 119, 121 C 324, 122 C 25, 450, 124 C 653, 695, 125 C 402, 711, 126 C 362, 639, 127 C 583, 129 C 378
where finding inadequately presented claim of error as to testimony of witness stated by court in its charge, recourse was had to testimony printed in connection with motion to set verdict aside, 118 C 431
where court directed verdict, finding adapted to testing errors in charge improper, 118 C 544
principal purpose of finding is to attack the charge, 119 C 63
if plaintiff proposes to rely upon last clear chance as alternative basis of recovery, his claims of proof in trial to jury must present necessary conditions for application of doctrine, 119 C 266
assignments based upon court's refusal to charge as requested disregarded where requests not made part of finding, 119 C 310
reference of court to statements of plaintiff made out of court and inconsistent with his testimony, as not admitted for purpose of proving truth of matters contained in them, could not be reviewed where no information in finding, 120 C 114
claim that trial court has misstated evidence in charge cannot be considered unless supported by finding without recourse to evidence, 120 C 688
where assignments directed to charge required portion of evidence, it should be in finding or should take form of exhibits referred to in and made part of finding, 121 C 361
finding not a determination of facts as such but only statement in narrative form of evidence party offered and his claims of proof, 123 C 25, 652
where finding barren of claim of nuisance and no application to rectify appeal to show that appellant made such a claim, no error in failure to charge on subject, 125 C 177
does not necessarily follow from offer or fact in evidence that party claims to have proved it, 125 C 180
errors assigned in charge not regarded where there is no finding, 127 C 723
charge must be tested by claims of proof in finding, 129 C 557

§ 27. ——Correction and Review.
See also § 6, supra

§ 27(1). In General

amendment of, up to the very session of Supreme Court, is quite common, 54 C 119
——and even after the session has commenced, 54 C 119
whether finding of facts is justified by weight of evidence is not reviewable, 54 C 222
Supreme Court will review finding based solely on written evidence, 55 C 249
"upon the facts set forth I find," *held* to be an inference of law from the facts which could be reviewed, 55 C 289
finding of jurisdictional facts by a tribunal of limited statutory authority may be questioned in any other court, 59 C 92
——but such finding is always taken to be true unless proved otherwise, 59 C 92
refusal to certify evidence as basis for correction, 67 C 459
where evidence is conflicting, correction of finding will be refused, 70 C 516, 72 C 51, 300, 398, 519, 75 C 571, 77 C 368, 78 C 714, 83 C 386, 84 C 555, 86 C 550, 88 C 720, 89 C 249, 90 C 199, 91 C 1, 190, 553
——even though it strongly inclines against finding, 84 C 344
——and court accepts testimony of one witness against several, 73 C 608
——particularly if demeanor of witnesses was important, 88 C 555
purpose and principle of correction, 71 C 612, 80 C 596
correction may be had to present claims of law made on trial, 72 C 20
cumbering record in attempt to secure retrial of facts criticized, 75 C 140, 83 C 429
application to rectify appeal as applied to finding, 79 C 78
——motion to correct finding and rectify appeal distinguished, 88 C 558
as to necessity that corrections concern claims made in request for finding, 81 C 84
finding is not corrected if there is sufficient evidence to support it, 82 C 572

if correction of finding materially alters case, it will be remanded for new trial, 82 C 619, 86 C 481
statements in draft finding marked "proven" are part of the finding and motion to correct them is superfluous, 84 C 594, 85 C 384, 86 C 536
if evidence is admitted subject to be made competent by subsequent testimony and it is not so connected, this fact should appear on record, 85 C 360
correction will be refused if court could reasonably reach conclusion, 85 C 661, 674, 87 C 323
——it must appear that no evidence supports conclusion, 87 C 1, 88 C 614
if either of two conclusions is possible court will not correct finding, 87 C 567
inadequacy of a finding respecting claim of law not contested on trial nor assigned as error cannot be ground of complaint, 88 C 9
if draft finding and finding are inconsistent, party should ask for a correction by trial judge, 88 C 119
if the evidence is all that is needed to present a question on appeal, inadequacy in finding does no harm, 88 C 383
finding not corrected unless conclusions reached were unreasonable on the evidence, 88 C 415, 90 C 188
that finding made in absence of request will not prevent correction, 88 C 655
finding not corrected by referring to memorandum of decision, 89 C 169
court will not correct finding unless conclusions appear unreasonable, 90 C 188
correction of finding not made if of no avail; if one denies he signed a note, cannot correct finding to show he was indorser, 90 C 251, 287
finding conclusive, if fact is found on conflicting evidence, 91 C 1
——ultimate facts not disturbed, if subordinate facts are not logically or legally inconsistent therewith, 92 C 306, 93 C 271, 94 C 420
——or are controlled by erroneous view of law, 93 C 271, 94 C 420
finding supported by evidence not corrected, nor additions that are immaterial made in conflict with conclusions legally drawn, 91 C 190
finding stands, in absence of evidence, unless inconsistent with subordinate facts, 91 C 260
finding presumed to be made on sufficient evidence, 91 C 266
in absence of evidence court simply ascertains if ultimate conclusions consistent with facts in finding and not erroneous in law, 91 C 272
parties not entitled to change in the finding to raise new issues, 91 C 421
application to correct does not reach statements in memorandum of decision, 91 C 692
correction not made to correspond to paragraphs of draft finding marked "proven" evidently by misunderstanding, 92 C 186, 668
presumed that where there is any competent evidence, court relied on that for finding, 92 C 208
fact that judge viewed premises not enough alone to prevent correction, 92 C 546
finding not corrected if trial court has already done so, 93 C 38
in absence of evidence conclusions of trial court stand unless inconsistent with subordinate facts or based on erroneous view of law, 93 C 271
correction of finding by adding fact not included in request for finding, 93 C 302
incidental finding of fact not mentioned in complaint harmless, if judgment not based on it, 93 C 545
finding made upon conflicting evidence will not be disturbed, 93 C 614, 97 C 308
that trial court heard parties and saw their appearance regarded where finding was as to good faith of transaction, 93 C 637
if justified by the evidence, must stand as made, 94 C 687
paragraphs stating conclusions of law harmless, if facts found support them, 95 C 11
what one fails or omits to do often of great weight, 95 C 11
finding corrected if evidence does not support it as made, 95 C 713
finding made on conflicting evidence is conclusive, 98 C 240, 374, 605, 808, 99 C 123, 169, 180, 264, 100 C 189, 285, 471, 652, 750, 101 C 750, 752, 102 C 38, 152, 331, 365, 529, 754, 103 C 352, 487, 624, 750, 758, 104 C 165, 539, 105 C 73, 252, 106 C 387, 729, 107 C 1, 79, 484, 112 C 160, 114 C 272
under guise of correcting finding this court will not retry case on its facts, 98 C 240
in absence of motion to correct, facts taken as found, 98 C 352
that a fact is "against the evidence" or "the weight of the evidence" no ground for correction, 98 C 580, 99 C 313
will not be granted merely to place appellant's claims in more favorable light, 99 C 67
if claims of law have been made but not included in record, remedy is by motion to correct, 99 C 122
to ask for insertion of mere testimony or of parts of draft finding marked "proven," or that undisputed facts be struck out, futile, 99 C 340
as to effect of hearsay testimony admitted by trial court, see 99 C 551, 105 C 353
additions rendering finding prolix, obscure and contradictory will not be made, 99 C 643

effect of view of premises by trial court on correction of finding, 99 C 709
error in drawing ultimate conclusion must be assigned as one of law, 100 C 57
——useless to print evidence to that end, 100 C 57
descriptive and evidential matter will not be added, 100 C 165
finding dependent on matters not appearing on record, as demeanor of witnesses and the like must stand, though printed records might indicate a different conclusion, 100 C 573
correction not made where finding based on inference neither forced nor unreasonable, 100 C 661
a finding containing all essential facts will not be changed, 101 C 406
facts already included by reasonable inference will not be added, 101 C 567
correction refused where change sought was so equivocal in expression as to carry unwarranted implication, 101 C 568
correction refused where Supreme Court could not say that trial court ought to have believed witness, 102 C 95
finding will not be corrected to add memorandum of decision, 102 C 152
conclusive if supported by fair inferences from the evidence, 102 C 501, 609
finding may be so grossly at variance with fundamentals, of judicial procedure as to amount to illegal action and be error in law, 102 C 543
——which would justify correction by Supreme Court under rules, 102 C 543
that a fact is "supported by the evidence," no ground for correction of finding, 103 C 352
corrections must be within province of Supreme Court to make, 103 C 390
that fact is "supported by evidence and is material," not a proper ground for claiming addition to finding, 104 C 17
finding will not be corrected in matters unnecessary to presentation of claims of law, 104 C 36
corrections not made as to matters of which court will take judicial notice, 104 C 46
party cannot complain of finding which corresponds with his own draft finding, 104 C 342
when evidence so strong as to induce reasonable belief of existence of fact, it should be found, 104 C 362
requested correction, objectionable in part, may be refused as a whole, 104 C 539
corrections on appeal from judgment in criminal case tried to court, 105 C 326
where only evidence as to fact was that of party who denied it, it should be stricken from finding, 105 C 430
if conditions on which judgment is based are materially varied by correction, new trial is proper, 105 C 430
evidence printed on defendant's appeal of no avail to plaintiff on his appeal, in absence of motion to correct finding, 106 C 315
fact not necessarily to be added where basis is statement of witness out of court, 107 C 87
——function of such statement is to affect credibility of witness, 107 C 87
inference drawn from evidence reviewable only upon motion to correct finding, 107 C 417
in criminal case tried to court no occasion to correct finding unless claim is made that facts found do not support its conclusions, 109 C 31
no occasion to correct in criminal case tried to court where claim that subordinate facts do not support conclusion raises same question as assignment of error that evidence does not support judgment, 109 C 124
effect of visit to premises by trier, 109 C 218
claim of correction in appeal on ground that correction is material and justified by evidence is improper, 109 C 505
——would compel Supreme Court, contrary to proper function, to determine weight of evidence, 109 C 505
advantage of best evidence rule cannot be taken on motion to correct finding where evidence not objected to on the trial, 109 C 589
where paragraph contains several statements part of which cannot be added, court not bound to dissect it and grant part, 109 C 665
basing argument on evidence printed in effort to secure correction of finding improper, 110 C 125
presumed that printed evidence is all evidence bearing on issue, 111 C 27, 628
when commission accepted practically all of evidence of witness, and rest was consistent with other testimony and reasonable, *held* error not to credit it, 111 C 532
that damage might have been caused by something else than cause found by trial court, not sufficient ground to correct finding supported by reasonable evidence, 113 C 100
cannot be corrected where evidence is such as to induce a reasonable belief in an impartial mind, 113 C 261
——or where matter is one involving credibility of witnesses and weight of evidence, 113 C 262
finding stands if there is a sufficiently strong probability of truth to induce belief in an impartial mind, 113 C 615
fact of trial court viewing premises taken into consideration, 114 C 182

finding sustained as to future event if trial court reached conclusion that it was reasonably probable, 114 C 506
testimony in conflict with indisputable physical facts cannot sustain finding, 114 C 647
mere possibilities or suppositions will not sustain inference, nor can it be drawn by conjecture, 115 C 50
——finding based upon inference can be corrected only where reasonable men could not differ, 115 C 58
in prosecution before court, assignment of error that on evidence accused not proven guilty makes unnecessary consideration of motion to correct finding, 115 C 306
that facts stated in finding are sufficient in opinion of commissioner not good ground for denial of motion to correct, 115 C 446
——parties entitled to have found facts proven which they deem necessary to present on appeal, 115 C 446
though finding is solely one of fact, it cannot stand if court imposed duty upon parties which law did not impose or absolved them from duty which law required or otherwise violated principle of law, 116 C 511
court entitled to draw reasonable and logical inferences from facts existing prior or subsequent to an event, 116 C 661
drawing logical deductions and making reasonable inferences from oral or circumstantial evidence is proper, 117 C 5
——but such deductions and inferences must rest on some basis of definite facts, 117 C 5
where correction destroys basis for conclusion, new trial must be had, 118 C 263, 121 C 586, 125 C 537
trial court may accord testimony a construction different from that asserted by appellant, 118 C 423
attempt to incorporate statements of testimony of particular witnesses improper, 118 C 423
in determining whether evidence established guilt beyond reasonable doubt, Supreme Court will not consider detailed corrections in finding, since it bases its determination on evidence, 120 C 624
evidential statements not added, 120 C 693
finding cannot stand if made on basis of facts not proven or of considerations not relevant and material and in absence of some element of situation necessarily to be considered, 122 C 64
practice of incorporating in brief tabulation of corrections sought with reference to relevant pages of record, commended, 123 C 585
where statement in court's conclusion was obviously based, in part at least, directly upon the evidence, to that extent court reviewed it on basis of that evidence, 124 C 17
court not bound to give credit to all of plaintiff's testimony as matter of law, 124 C 94
court will not retry case; finding on conflicting evidence conclusive, 126 C 20
assignment that court erred in finding defendant guilty of crime upon all the evidence makes it unnecessary to consider detailed changes requested in finding, 128 C 154

§ 27(2). Admitted or Undisputed Facts; Facts Found without Evidence

finding material facts without evidence or refusing to find an admitted or undisputed fact is error, 71 C 668, 72 C 225
——direct testimony to a fact which court refuses to find or weight of evidence in its favor not enough to be basis of error, 71 C 668, 72 C 225
to justify correction of finding facts must be admitted or undisputed, 72 C 404, 519, 74 C 726, 77 C 368, 78 C 709, 79 C 426, 89 C 549, 90 C 434, 91 C 190
mere failure of direct testimony to contradict fact does not make it uncontradicted where other facts contradict it, 74 C 468, 76 C 323, 593
fact is not found without evidence if slight evidence supports and none opposes it, 75 C 88
as to finding that fact was undisputed, see 78 C 129
——fact not undisputed, if evidence conflicts, 72 C 225, 651
——or any evidence supports finding, 75 C 88, 79 C 426, 452, 80 C 392, 82 C 572, 89 C 325
——court need not believe a witness not disputed or impeached, 75 C 298
a fact is not necessarily "admitted or undisputed" because some witnesses testified to it and there was no contradiction, 81 C 359
finding will not be corrected if there is any evidence to support it, 82 C 572, 87 C 323, 567, 89 C 325
finding conclusive if there is conflict of evidence, 83 C 386, 84 C 555, 86 C 579, 87 C 1, 91 C 1, 211, 93 C 317, 614, 94 C 311
finding of fact without evidence is an error of law and reviewable, 84 C 122
motion to correct denied if evidence to support finding exists, 85 C 661, 674
fact will not be stricken out unless found without evidence, 85 C 674
finding altered only when facts are found without evidence, 88 C 615
finding will not be corrected to add fact as to which party having burden of proof offered no evidence, 89 C 58
——or where no evidence supports it, 91 C 557
unless fact found without evidence or undisputed fact omitted finding will not be corrected, 89 C 549

finding not corrected unless material fact found without evidence or undisputed fact omitted, 90 C 434

fact not necessarily established or undisputed because not directly contradicted, 90 C 469

fact will be stricken out only if it appears that it was found without evidence, 96 C 12

that no one disputes statement of party does not mean that court must adopt it, 96 C 142

correction of finding made only where fact found is without evidence, or an admitted or undisputed fact is not found, 97 C 308

findings will not be corrected unless facts are supported by no evidence or are admitted or undisputed; Supreme Court will not retry facts, 98 C 238, 580, 761, 99 C 180, 104 C 596, 105 C 33, 625, 106 C 503, 107 C 81, 108 C 19

if fact found is supported by some evidence it must stand, 98 C 581, 813

three cases in which correction will be made restated and efforts to go outside them strongly criticized, 99 C 62

successful party may appeal from trial court's refusal to find an undisputed fact, 99 C 516

the only permissible grounds for correction are those stated in the rules; no others can be considered, 101 C 422, 102 C 501, 529, 574, 103 C 486, 624

what is an "admitted" or "undisputed" fact, 102 C 57, 529

that one witness testifies to fact and none directly contradicts does not necessarily make it "admitted or undisputed," 102 C 57

"undisputed fact" is one admitted but omitted by inadvertence or as immaterial, 102 C 529

——absence of direct contradiction of testimony does not make fact undisputed, 102 C 529

——refusal to find certain custom of trade, 102 C 530

facts not "admitted" or "undisputed" because not contradicted, 105 C 651

only facts found without evidence will be stricken out; only admitted or undisputed facts will be added, 107 C 79

——court will not retry facts; they stand if found on conflicting evidence, 107 C 81

subordinate facts can be corrected only on grounds set forth in rules of court, 107 C 612

——absence of denial does not make fact admitted or undisputed, as court may believe or disbelieve witness, 107 C 612

finding can only be corrected on the three grounds prescribed in the rules, 108 C 19

fact is found without evidence where no testimony or reasonable inference supports it, 109 C 343

——as where it rests solely on conviction of trial court that witness did not fully disclose his knowledge, 109 C 343

adding fact or striking out fact found, 111 C 733

court will not add fact supported only by evidence of witness which trial court specifically says it did not believe, 112 C 398

finding a fact without evidence or failing to find an admitted or undisputed fact is error in law, 114 C 531

that testimony not expressly contradicted does not make facts necessarily admitted or undisputed, 114 C 671

——court may disbelieve testimony or give it construction different from that asserted, 114 C 671

though testimony may be undisputed, court may not have given credence to it, 116 C 672

finding based on conflicting testimony cannot be corrected, 118 C 218

finding will not be corrected where there is dispute in the evidence, 119 C 284

finding made on conflicting evidence must stand, 122 C 271

finding of subordinate facts unless made without evidence or omitting some material admitted or undisputed fact, cannot be changed, 123 C 140

where conflicting evidence, finding could not be corrected, 124 C 539

fact is not admitted or undisputed merely because one or more witnesses testify to it and no one denies it, as it is for trial court to determine what credence it will give witnesses, 128 C 138

§ 27(3). Immaterial or Useless Corrections

if correction could not avail, it will not be made, 70 C 481, 71 C 600, 632, 90 C 251, 287

correction not within the issues will not be made, 71 C 632

correction which is merely evidential will not be made, 72 C 398, 88 C 720

correction will not be made if fact is not necessary to present or strengthen claims of law, 72 C 404, 76 C 5, 81 C 451, 85 C 383

correction will not be made if finding and paragraphs of draft finding marked "proven" present all necessary facts, 73 C 720, 75 C 459, 79 C 60, 84 C 610, 85 C 383, 86 C 540

correction which is intended to show claims of elementary principle of law, 76 C 324

correction of finding denied that does not strengthen appellant's claims of law, 81 C 452, 85 C 384

correction not made if finding complained of merely states reason for ruling on evidence

which appears in testimony annexed to motion, 81 C 642

if finding not marked "proven" and nothing gained by doing so, same not remanded, 88 C 22

correction which is a statement of testimony will not be made, 88 C 109

correction which would merely amplify finding not made, 88 C 136

finding not disturbed for evidential and immaterial matter, 88 C 720

alteration in finding which if made would have no effect, denied, 90 C 658, 93 C 633, 95 C 11, 97 C 223

claimed errors as to subordinate facts, not material to decision, will not be corrected, 93 C 207

correction not to be made as to unessential fact, 96 C 680

correction which would not affect any ruling or claim of law properly refused, 97 C 322

correction will not be made as to immaterial matters, 98 C 603, 99 C 367, 100 C 466, 101 C 323, 567, 102 C 152, 103 C 390, 104 C 539, 596, 105 C 33, 252, 651, 106 C 236, 107 C 143

facts, already substantially found, will not be added, 104 C 539

facts already properly found as conclusions will not be added, 105 C 33

will not be corrected to include facts which would not affect conclusion, 107 C 1, 40, 630

trial court should rarely refuse to add admitted or undisputed facts merely because it deems them immaterial, 107 C 630

——but they will not be added if they will not affect result, 107 C 630

serves no useful purpose to seek corrections as to nonessential details which do not serve to make clearer situation as related to claimed errors, 123 C 205

§ 27(4). Attempt to Change Finding in Bulk

request to substitute draft finding for finding awakens distrust of entire appeal, 99 C 290

request for correction of entire finding violates the rules and awakens distrust as to propriety of appeal, 107 C 89

attempt to substitute almost complete new finding discountenanced, 107 C 616

attempt to substitute entire draft finding for finding violates rules and proper practice, 108 C 602, 109 C 609

attempt to substitute almost all of draft finding can rarely be made in good faith and violates rules and practice, 109 C 609

attempt to secure alteration of finding in bulk improper, 112 C 181

basis of refusal to regard very sweeping requests for corrections, 113 C 686

corrections merely seeking to incorporate exact language of draft without substantial change, will not be made, 115 C 475

attempting to substitute draft finding for major part of finding as made, discountenanced, 125 C 701

§ 27(5). Procedure

procedure to secure correction in general, 72 C 355, 73 C 435, 75 C 192, 97 C 251

exception as to finding to be made part of motion to correct, 72 C 398, 81 C 351

where time to follow statutory procedures is lacking, Supreme Court may, on motion, allow correction, 73 C 436

request must have been made to trial court, 75 C 192, 80 C 276, 81 C 310, 548

allegation of error in finding fact without evidence as equivalent to request for correction, 77 C 7, 80 C 597

claim for correction should be made in assignment of errors, 77 C 7, 80 C 275, 596

if motion to correct made and finding refiled, further motion improper when, 78 C 14

notice of refiling of finding, 78 C 16

appropriate exceptions necessary to secure correction of finding, 81 C 84

question desired to be reviewed must be included in original statement thereof, 81 C 84

trial court can add omissions in questions to be reviewed at its discretion, 81 C 84

necessity of exceptions being taken below, 81 C 84, 351

procedure by motion to correct is alternative to that provided by statute, 81 C 169

trial judge must first be asked to rectify, 81 C 310

inadvertent mistake corrected on stipulation filed in Supreme Court, 81 C 442

to question an ultimate fact the subordinate or evidential facts must appear, 81 C 532

to present exceptions to finding it must appear that a motion to correct was made and exceptions assigned as error, 81 C 548

facts on which evidence is based must appear of record, 81 C 592

request for or notice of material alteration of finding should be seasonably filed, 83 C 320

if motion is for finding as to each item going into amount of judgment, court may deny it, 84 C 207

on motion to correct finding reference may be made to paragraphs of finding or request to find by number only, 85 C 445

motion to correct should ask to have paragraph of finding complained of stricken out, 85 C 661

in absence of assignment of errors asking correction of finding, Supreme Court cannot correct it, 88 C 130

memorandum of decision not basis for correction; statutory steps must be followed, 89 C 169
to correct finding, party should make motion accompanied by evidence, 89 C 169
distinguished from rectification, 89 C 583
in absence of evidence Supreme Court cannot say that a finding that substantial evidence was offered, is wrong, 91 C 448
agreed statements of facts no place in record unless certified and made part thereof by trial court, 91 C 692
facts in memorandum of decision not reached in application to correct finding unless part of the finding, 91 C 692
motion to correct finding should have written exception to particular finding or to refusal to find, 92 C 1
motion to correct should not anticipate but should follow refusal of trial court to act, 92 C 1
finding not changed to correspond with paragraph marked "proven" if it was so marked by mistake, 92 C 186
to correct finding written exceptions must be filed and material evidence made part of record, 93 C 38
assignments of error must state desired corrections, 93 C 317, 97 C 222, 308, 98 C 762
——that court erred in finding fact not enough, 93 C 317
——that evidence too conflicting and unreliable to support finding not enough, 93 C 317
ground or basis for each exception must be stated in finding, 94 C 533
finding not corrected unless requested below; this court may overlook failure, 95 C 475
reasons of appeal are limited to paragraphs attacked in motion to correct, 97 C 92
two methods of securing correction described, 97 C 251
finding should not be corrected to add paragraph that "the only evidence" offered on certain issue was that therein stated, 97 C 631
——if evidence deemed insufficient, motion to strike out fact found correct procedure, 97 C 631
exception should state one of grounds provided in rule, 98 C 580
written exceptions must be annexed to motion to correct to afford basis for an appeal, 98 C 580
assignment of error that court "erred in finding," etc., is insufficient, 98 C 761
motion seeking correction "to accord with evidence submitted" is improper, 99 C 62
whichever of alternative methods is followed, permissible grounds of correction are the same, 99 C 182
motion can attack only subordinate facts; ultimate facts must be attacked as errors of law, 99 C 356
facts cannot be supplied to complete finding from evidence certified on question of setting verdict aside, 100 C 118
appellant may pursue only those exceptions contained in motion to correct, 100 C 506
the two statutory remedies for correction defined and explained, 100 C 506
court need not dissect paragraph of request but may reject all if any part is objectionable, 101 C 163, 102 C 331
paragraphs of motion to correct must correspond with paragraphs of draft finding, 101 C 349
——and assignments of error must follow motion to correct, 101 C 349
where finding states ultimate facts, duty of parties seeking review to have subordinate facts stated, 101 C 455
Supreme Court will not correct where neither exception nor assignments of error state any of proper grounds, 102 C 574
assignment that facts found "without sufficient evidence" improper, 103 C 88
——also that facts not found when "reasonably sustained by evidence," 103 C 88
party cannot convert question of fact into one of law merely by calling it such, 103 C 249
——can only be reached by proceedings to correct finding, 103 C 249
request to add to finding must be supported by transcript of material evidence, 103 C 678
draft finding must appear to support exceptions to refusal to find, 103 C 678
denial of motion to correct not assignable error; must be based on written exceptions, 103 C 678
exceptions to refusal to find not reviewable unless draft finding appears, 103 C 679
motion to be filed within one week, 103 C 750
——if judge certifies all evidence this is equivalent to extension of time to file, 103 C 751
grounds for correction must appear in the motion or reasons of appeal, 104 C 36
appeal must be based upon exceptions annexed to motion to correct, 104 C 165
exception must state one of three permissible grounds for correction of finding, 104 C 165
where agency is found as a fact, not a conclusion, it can only be attacked by motion to correct, 104 C 372
written exceptions and evidence must be annexed to motion to correct, 104 C 501, 105 C 342
various methods to secure correction in court case, 104 C 660
appellant should move to strike out findings which he seeks to attack and not merely move to add inconsistent ones, 104 C 709

cannot be considered where rules not complied with, 104 C 738

where both methods tried, but neither properly pursued, correction must be denied, 104 C 742

motion to correct must be accompanied by written exceptions, 104 C 743

claims not incorporated in motion to correct cannot be considered, 104 C 743

where claims of law omitted, or improperly stated, remedy is by exceptions or motion to rectify, 105 C 342

exceptions that "all evidence did not warrant the finding" not in proper form, 105 C 429

conclusions cannot be reviewed if subordinate facts not stated; remedy is motion to correct by adding subordinate facts, 107 C 1

where ultimate facts stated with subordinate facts, no ground of inquiry is afforded on appeal, in absence of steps to correct, 107 C 1

motion for extension of time for filing of motion to correct does not waive right to proceed under method of filing all the evidence, 107 C 77

grounds for correction must be stated whether procedure is by motion to correct or by taking up all evidence, 107 C 612

exceptions must be confined to three permissible grounds, 108 C 19

——that finding is against weight of evidence improper as Supreme Court cannot retry facts, 108 C 19

under statute no motion to correct required, but it should be filed to apprise trial court of corrections desired, 109 C 609

reasons of appeal that court erred in holding or not holding certain facts proven disregarded, 110 C 4

finding of specific fact cannot be set aside save in manner provided in rule, 110 C 271

court should file substitute finding where original finding is largely corrected, 111 C 162

where it is not alleged that fact was found without evidence or fact to be added was admitted or undisputed court refused to consider corrections, 111 C 469

necessity of assigning ground for seeking correction, 112 C 184

exception on ground that finding was without "substantial testimony" or "convincing proof" improper, 113 C 610

under new rules (effective Feb. 1, 1931) motion to correct finding is no longer permitted, 116 C 161 (footnote)

assignments not referring to exhibits of testimony annexed improper; later filing extracts with statement that each referred to all or certain assignments improper, 116 C 210

trial court's finding of subordinate fact will not be rejected upon a mere reference to certain evidence in the record printed only for the purpose of testing its admissibility, 116 C 375

appeal from allowances to appraisers in receivership; in absence of transcript of proceedings corrections of or additions to finding cannot be made, 116 C 730

corrections in finding not considered where not referred to in assignment of errors, 119 C 649

though evidence be not brought up, finding may be tested by other facts found, and court may consult memorandum of decision to determine grounds on which it rested, 122 C 64

corrections in findings of compensation commissioner should be sought by appellee by assignment of error not by bill of exceptions, 122 C 129

practice of incorporating in appellant's brief a tabulation of corrections sought with references to relevant pages of record, commended, 123 C 585

finding of commissioner based, in part at least, directly on evidence may to that extent be reviewed on basis of that evidence, 124 C 436

——being made not merely as deduction from other facts found but upon all evidence in case, it is not to be treated as conclusion reviewable only on basis of subordinate facts, 124 C 436

finding as to improper argument cannot be reviewed where court stenographer did not take argument and no proceedings taken to rectify appeal, 124 C 567

change in finding made by Superior Court in compensation appeal not open to attack where no appeal taken from that action, 125 C 110

only way to have stricken from finding fact that, under agreement of counsel, new trial was solely to determine damages, when it does not appear in record as stipulation or in transcript, is by rectification of appeal, 125 C 215

within power of court to correct finding at any time before argument of appeal, 128 C 213

§ 27(6). Taking up Evidence

refusal to certify evidence as to fact found not proven sustained, 67 C 463

correction will not be made if all material evidence is not certified to court, 70 C 102, 71 C 254, 72 C 519, 651, 87 C 400, 90 C 133, 104 C 596, 125 C 207

only such parts of evidence as are material should be certified, 70 C 102, 71 C 681, 72 C 300

——but such material evidence should be certified, though parties do not ask it, 89 C 208, 105 C 429

evidence to support exception must be certified; how this duty enforced, 72 C 37, 80 C 280, 83 C 500
——but clerk should not print until cost paid, 76 C 324
Supreme Court will not order evidence certified as to immaterial fact, 73 C 139, 88 C 211
taxing expense of printing evidence, 75 C 382
statute to be liberally construed, 77 C 9
as to effect of taking up all evidence on proceedings to correct appeal, 79 C 78
taking up entire evidence is alternative to §§ 795, 796, Rev. 1902; certifying evidence after time limited as equivalent to extension of time, 81 C 169, 357
in absence of request to correct finding or set aside judgment, need not print all rulings and evidence, 81 C 288
to review direction of a verdict all evidence and rulings only necessary; if there is a finding and correction is required, then have all the evidence certified, 82 C 666
court assumes that evidence certified is all material evidence, 83 C 105, 93 C 204
delay in having record printed as ground for dismissing appeal, 83 C 128
trial court need not certify evidence until statement or copy has been presented, 83 C 316
exception to finding of facts must be accompanied by the evidence, 83 C 500, 105 C 595
objection to a finding must have the evidence to support it, 87 C 400
mere testimony of a witness should not be added to finding, and printing of evidence for that purpose improper, 88 C 109
Supreme Court will not order trial court to certify evidence if it will serve no useful purpose, 88 C 211
under motion to correct finding, judge must certify all material evidence, 89 C 202
desired additions to finding must be supported by evidence, 91 C 553, 93 C 38, 125 C 124
evidence necessary to secure correction under statute, 91 C 692
evidence certified to support exception to finding not expunged because based on judge's view of premises, 92 C 546
duty of trial court to certify all evidence that is material, 93 C 210
where procedure is by certification of all evidence and rulings, necessity of motion to correct, 95 C 475, 96 C 444
mere taking up evidence without motion to correct finding is of no avail, 96 C 444
where both parties seek correction, one cannot depend on evidence certified in support of other's request, where former failed to obtain certification for his purpose, 96 C 454
where appeal is plainly defective court should refuse to certify evidence, 97 C 222, 98 C 761
is expensive procedure; to be used only where substantial part of evidence must be taken up, 97 C 252
——not applicable to finding in jury case, 97 C 322
printing all evidence and attempting to use it for other purposes criticized, 98 C 9
printing evidence in absence of motion to correct groundless and improper, 98 C 372, 100 C 686, 700, 109 C 593, 110 C 179
printing of entire evidence *held* unjustifiable and a useless expense, 98 C 460, 584, 727, 105 C 482, 109 C 602
both methods cannot be used but motion to trial court to correct, without exceptions, may pave way to taking up all evidence, 99 C 639
——where evidence was printed, court assumed such motion to have been made though not in record, 99 C 639
changing method from motion to correct to certification of entire evidence and rulings is allowable, 99 C 641
remedy by taking up entire evidence applicable only to court cases, 100 C 506
appellant must file written exceptions and relevant excerpts from evidence to support motion to correct, 100 C 506, 102 C 353, 103 C 750, 104 C 501, 105 C 342, 108 C 1
in proceedings to correct finding, printing testimony more than once should be avoided and cross references made, 100 C 507
correction not supported by evidence printed will not be granted, 100 C 533
effect of abandoning procedure by way of exceptions and causing all evidence to be certified, 102 C 52
evidence printed but not certified will not be considered, 102 C 357
denial of motion to have all evidence printed not ground of appeal, 102 C 480
——remedy is application for order compelling judge to act, 102 C 480
evidence has no place except where fact is claimed to have been found without evidence; when transcript of record proper to present claim that fact is admitted or undisputed, 102 C 539
remedy by taking up entire evidence should only be followed when necessary, 103 C 486
trial court may refuse to certify evidence unless motion to correct filed within statutory time; or by certifying the evidence, waive the defect, 103 C 486, 750
when entire evidence certified, desired corrections of finding must be distinctly stated in assignments of error, 104 C 300
when finding not attacked, entire evidence should not be printed, 104 C 447

where evidence essential to correction is not in record, facts are assumed to be properly found, 104 C 596
subordinate facts cannot be corrected unless evidence printed, 104 C 665
presumption that trial judge has certified all other evidence, in addition to that claimed by the parties, which he deemed material, 105 C 429
proper assignment of error where all evidence is taken up, 106 C 503
seeking an extension of time to file motion does not waive alternative method of taking up all evidence, 107 C 77
——extension of time to appeal does not extend time to file evidence under that procedure, 107 C 77
——Supreme Court will not order evidence certified where not filed in time permitted, 107 C 77
where only small portion of evidence necessary, proceeding by exceptions better method, 107 C 426
——if alternative method be adopted, provision for omission from printed evidence of immaterial matter should be liberally applied, 107 C 426
method of taking up entire evidence is an alternative not a concurrent remedy, 108 C 1
when all evidence taken up, each exception to finding may be assigned as reason of appeal, 108 C 1
where so-called exhibits annexed to exceptions consisted in references to page and line of typewritten transcript of testimony, motion properly denied, 109 C 354
——would impose undue burden on court, and, on printing, would afford appellate court no guidance, 109 C 354
——motion should request desired changes and annex to exceptions to failure to grant any specific request transcript of evidence bearing on it, 109 C 354
where no motion to correct, printing entire record violation of rule and imposition on State, 109 C 593, 110 C 178
while no motion to correct is required where all evidence taken up, it is the better practice, as thereby the trial court is apprised of corrections desired, 109 C 609
printing of evidence relative to damages not relevant to appeal, unjustifiable, 110 C 166
long excerpts of irrelevant evidence in support of motion to correct, improper, 113 C 145
fact that party is seeking very sweeping corrections in finding no ground for trial court to refuse to certify evidence, 113 C 686
——if appeal fails to set up any reason requiring resort to evidence trial judge may refuse to certify it, 113 C 686
if substantial portion of evidence seems to court irrelevant or immaterial, it may require party submitting evidence to strike it out, 113 C 686
where several corrections sought and reference as to each is to a single long exhibit of testimony, procedure improper, 114 C 229
court directing certain evidence not to be printed; party may move this court to print that evidence, 114 C 272
power of trial court to direct evidence not to be printed refers to evidence clearly irrelevant, 114 C 272
error to decline to print evidence supporting additions sought on ground that testimony, though undisputed, unless believed by trier did not establish facts, 114 C 272
where appellant followed neither allowable method of bringing evidence before court but filed only evidence of certain witnesses, court refused to direct this evidence to be certified, 114 C 540
in determining whether subordinate fact was found without evidence, the evidence must be "separately designated as an exhibit," 116 C 375
——and consists of either the entire evidence or material excerpts, 116 C 375
——must be certified by official stenographer and court and printed and become part of record, 116 C 375
——and will be taken to be all the material evidence on the point in question, 116 C 375
where appellant caused all evidence to be certified, but did not follow practice for securing corrections, the case will be decided on finding as made, 116 C 690
when no assignments of error looking to correction of finding, printing of entire evidence unwarranted; no costs taxed to prevailing appellant for printing of this evidence, 117 C 538
printing all evidence unjustifiable when only small part of it relevant to corrections claimed, 118 C 689
where evidence on trial not made part of record, assignments which attack finding as made without evidence unavailing, 123 C 333
Supreme Court may resort to evidence printed in connection with claims for correction of finding in connection with plaintiff's claim that court should have disregarded marks appearing on photographs in evidence, 124 C 226
can use evidence only for purpose of procuring such additions and corrections as are assigned as error, 125 C 274
when extension of time will be granted to file transcript of evidence in connection with assignments of error seeking changes in finding; "good cause"; exceptions to general rule, 125 C 491 (footnote)

finding not subject to correction where no evidence printed or available, 126 C 17, 127 C 72

where finding dependent in part upon other facts found and in part on evidence and such evidence not in record, correction cannot be made, 126 C 335

in appeal from order for payment of claim of attorney's fees in receivership, resort could not be had to evidence or facts found in appeal from judgment appointing receiver, where these not before court in making order, 127 C 35

ultimate responsibility for seeing that evidence printed is that actually given at trial on court, 127 C 289

——may correct transcript as certified by stenographer, 127 C 289

history of practice of certifying evidence for purpose of appeal reviewed, 127 C 290

for Supreme Court to determine whether there were undisputed facts in evidence before committee and add them to report, it must have evidence before it, 129 C 295

Supreme Court does not ordinarily consult evidence not recited in finding in considering correction, 129 C 401

statement made among conclusions of court if it is based in part directly upon the evidence is reviewable upon basis of evidence and not as conclusion, 129 C 468

finding which is clearly one of fact from evidence and not a deduction, though stated among conclusions, is open to attack only on ground that evidence fails to support it; where evidence not printed, finding must stand, 129 C 550

§ 27(7). In Jury Cases

it is proper to correct finding to show charge inapplicable to facts, 72 C 628

——or that omission to charge was due to appellant, 79 C 705

strictly speaking no finding in a jury case; Supreme Court corrects such rarely; must apply to trial judge, 83 C 320, 88 C 136, 90 C 41

where entire evidence appears in record, it supersedes statements in finding as to what it proves, 88 C 494

whether court erred in not setting aside verdict is determined by evidence; no correction of finding helps, 88 C 642

correction of finding in jury case is by way of, 92 C 155

in jury case, correction can only be made if claim as to facts proved are wrongly recited, 93 C 328

procedure to correct in jury case, 97 C 322, 98 C 609

nature of finding in jury case; correction, if necessary, should be asked of trial judge, 98 C 614

in jury case not made to secure meticulous accuracy in detail, nor to show that there was no evidence "tending to prove" certain facts, 99 C 103

——nor in relation to claim that verdict was contrary to evidence, 99 C 103

will be corrected only when reasonably necessary to fairly present claimed errors, 99 C 103

in jury case, counsel must annex to motion or exception pertinent testimony; if all testimony is filed, court may properly deny motion, 100 C 505

method of correcting finding in jury case by motion and exceptions identical with similar method provided for court case, 104 C 660

——relation of application to rectify appeal, 104 C 660

finding should not contain ultimate facts as to character of testimony; will be stricken out by Supreme Court on its own motion, 104 C 660

a finding supported by direct evidence or fair inference must stand; should contain all claims as to which some evidence was offered, 105 C 366

finding in jury case cannot be corrected if it is fair narrative of claimed proofs and is sufficient to present questions of law, 108 C 126, 454, 113 C 677, 114 C 236, 116 C 150

——nor to secure meticulous accuracy as to details in claims of proof, 110 C 217, 114 C 243, 125 C 553

in jury case procedure is by motion and exceptions or proceedings to rectify, 108 C 454

motion for, in jury trial, containing improper matter; exceptions should be taken to finding, not to refusal to correct, 113 C 145

notwithstanding limitations on correction, statement of D's testimony of purpose of placing title in wife should have been included, to test charge, 117 C 289

is not determination of facts but narrative statement of claims of proof; sole purpose to present claimed errors in charge or rulings of court, 117 C 542, 119 C 63

——appellant cannot raise factual issues by assignments for its correction, 117 C 543

——court justified in omitting to insert claims made on evidence offered which were not presented to it at the trial and not involved in issues appearing on face of record, 119 C 63

——in such case party may place evidence on record by having it printed, but unless claim was made on trial he may need to resort to rectification to bring matter before Supreme Court, 119 C 63

claims of proof corrected in malpractice case by striking out susceptibility of girl's skin to scar and knowledge of defendant of this, 119 C 494
plaintiff's claims of proof amended to add facts necessitating charge of supervening negligence, 120 C 255
party while vouching for general credit of witness he calls, is not bound by every statement, 122 C 1
——that witness testified to certain facts not basis for correction of finding to state that they are facts which party not only offered evidence to prove but claims he has proven, 122 C 1
in jury case finding is but a narrative of facts claimed to be proved by each party, made for purpose of presenting errors in charge or rulings of court, 123 C 25, 652
——it serves no useful purpose to seek corrections as regards details or facts not bearing on these claimed errors, 123 C 25
if party wishes claims of proof based on other party's evidence he should put them in his own, rather than attempt to get them in opponent's finding, 123 C 646
though party offer evidence of fact it does not necessarily follow that he claims to have proved it, 123 C 652
sufficient foundation for claims of proof though little direct evidence, 124 C 171
where plaintiff filed no request to charge with respect to delineation of intersection and after charge made no suggestions, only way he could attack finding as to his claims of proof in this regard was by motion to rectify, 125 C 37
that party in jury case has offered evidence of a certain fact does not require its addition to its claims of proof because he may not have claimed to prove it; remedy in such case is by application to rectify appeal, 125 C 180
finding that plaintiff offered evidence that defendant dentist should have known that on extraction of tooth root was left in jaw cannot stand, in absence of expert evidence to this effect, 126 C 608
finding that plaintiff claimed to have proved that defendant gave no indication of her intention to stop or back, stricken out, 127 C 284
finding in jury case is merely narrative of facts to present claimed errors in charge; no useful purpose to seek corrections as regards nonessential details, 127 C 582

§ 27(8). Particular Cases—Miscellaneous

refusal to find that book, copyrighted in name of party, was copyrighted by that party, is error, 70 C 678
reasonableness of time, 71 C 95, 87 C 50
court will review legal effect of delivery of goods for sale, 71 C 157
procuring cause, 71 C 599, 75 C 155, 91 C 191
agency, 71 C 668, 74 C 489, 79 C 195
authority of corporate officer to indorse note, and notice to indorsee reviewable, 71 C 668
failure to agree in condemnation, 72 C 492
employment of attorney, 74 C 237
existence of highway, 74 C 324
mental capacity, 75 C 134, 83 C 615
fraud, 75 C 134, 83 C 511, 84 C 341
finding fact under misconception as to burden of proof was error, 75 C 187
——failing to treat as material facts which might influence conclusion, 73 C 573
that writing was last will, 75 C 301
that injury was due to failure to supply sufficient number of workmen, 75 C 381
reasonable use of water, 78 C 171
ownership and its bona fides, 80 C 423
payment, 81 C 355
danger of using mixture on hot stove, 81 C 358
dedication, 81 C 408
existence of agreement, 83 C 196
conclusion that one has no right, title or interest in land not reviewable unless plain rules of reason violated or facts are legally inconsistent, 83 C 386
adverse possession, 83 C 500
whether dam increases amount of water diverted from a stream, 83 C 611
desertion as ground for divorce, 84 C 593
finding on conflicting evidence not disturbed; no execution or delivery of a note, 86 C 579
questions of motive, intent, good faith, and the like, 87 C 209, 88 C 157
subordinate facts *held* not to support conclusion of trial court that work done to keep contract alive was not in good faith, 87 C 209
intent is question of fact and nonreviewable, 88 C 157
whether court can review evidence in disbarment proceedings, quaere, 88 C 447
dependency in compensation cases, 89 C 152
decision as to whether person or place is a suitable one for liquor license, reviewed when, 89 C 310
whether part of highway was bridge, 89 C 325
abandonment of husband by wife, 90 C 213
substantial performance of building contract, 91 C 281
waiver, 91 C 281
reasonableness of time in which to record deed, 91 C 421
adverse finding conclusively disposed of creditor's contention that conditional sale was still in effect, 94 C 567

finding that notice to renew lease not given is final, 95 C 447
that goods were sold and delivered to one of two defendants, 96 C 139
it might be error for court to accept an expert opinion where it appears to be based on grounds wholly inadequate and unreasonable, 96 C 295
——but not ordinarily where a court accepts the opinion of one expert against several, 96 C 300
that written document was not intended to include all terms of agreement, 96 C 479
that cattle were not at large contrary to law, were not unruly, and were not voluntarily allowed to trespass by owner, 96 C 661
finding of prescriptive right to use of passway, 96 C 680
finding as to intent in delivery of deed, 97 C 31
——as to ratification, 97 C 31
——abandonment, 97 C 36
——acceptance and acquiescence, 97 C 36
that defendant never promised to pay commission, recovery of which is sought, 97 C 223
reasonableness of time will be reviewed on basis of subordinate facts, 97 C 252
inference as to purpose of parties is for trial court, 98 C 2
finding as to intention of person stands unless unreasonable, 98 C 667
whether possession of land has been open, continuous and adverse, 99 C 56
question whether person present at conference saw and heard certain things is peculiarly for trial court, 99 C 144
whether sale is one by sample where all subordinate facts found, 99 C 296
that contractor continued to furnish services in the completion of contract is a mixed conclusion of law and fact and hence reviewable, 99 C 398
finding of adverse possession conclusive, 99 C 421
court may review finding that applicant for naturalization is unfit for citizenship upon subordinate facts found, 99 C 551
finding as to building restriction lessening value of land not reviewable if testimony conflicts, 99 C 665
lacking finding of circumstances of parties, conclusion that operation in plastic surgery is reasonable and necessary expense stands, 100 C 163
that injury did not arise out of employment, 100 C 383
correction denied where trial court found testimony of experts unreliable in view of other circumstances in evidence, though no direct contradiction, 100 C 661
that there was no valuable consideration for a conveyance claimed to be fraudulent, 100 C 715
that grantee had knowledge of nature of conveyance, based on inference, 100 C 715
that contract was modified by agreement of parties, 100 C 719
finding as to intent of parties as to land included in conveyance reviewed, 101 C 48
finding as to dimensions and extent of locus is conclusive where court has viewed premises, 101 C 406
that plaintiff had no title to land in suit by deed or adverse possession, 101 C 407
whether defendant in divorce was habitually intemperate is a conclusion which stands unless unreasonable, 101 C 422
conclusiveness of finding as to intolerable cruelty, 101 C 422
that seller ready and able to perform real estate contract, 101 C 504
that fall from veranda was due to party losing balance and not to defect in railing, 101 C 568
that conveyance from husband to wife was fraudulent, 101 C 694
intention of parties as determining construction of ambiguous deed, 102 C 52
finding that old stone wall was boundary of land not conclusive if inconsistent with deeds in evidence, 102 C 90
ordinarily finding as to waiver of right to rescind contract is conclusive, 102 C 137
finding reviewable where facts can reasonably lead to but one conclusion, 102 C 138
lack of probable cause in malicious prosecution as a reviewable conclusion, 102 C 445
existence of express malice, 102 C 447
evidence has no bearing in reviewing conclusions, 102 C 529, 609
waiver is either a question of fact or conclusion of fact, 102 C 531
finding of state referee made on conflicting evidence is conclusive, 103 C 279
that party had been upon right of way did not require finding that he had observed it, 103 C 285
——particularly it would not charge him with knowledge of rights of adjoining proprietors, 103 C 285
finding of ability of party to respond in damages *held* not based on mathematical calculation but conclusion from all circumstances, 103 C 392
finding of existence of partnership, or agency, conclusive if legally or logically supported by subordinate facts, 103 C 447
procuring cause of sale, 103 C 487
existence of debt or duty "under garnishment statute," 103 C 624
conclusion of donor's intent to make a gift not reviewable, if reasonably drawn, 104 C 17
where agency is found as a fact, not a conclusion, it can only be attacked by motion to correct, 104 C 372

construction of plans and specifications presents reviewable question of law, 104 C 430

where finding establishes way by grant, correction to way of necessity, immaterial, 104 C 596

findings de abandonment of right of way and loss by adverse possession, 104 C 596

finding that executor who was also trustee, continued to hold funds as executor is conclusive unless violating law, reason or logic in view of facts found, 105 C 235

in criminal case tried to court, conclusion that guilt established beyond reasonable doubt may be tested only by subordinate facts, 105 C 326

whether a highway is defective, whether accident due to failure to maintain fence, or as to insufficiency of fence, are all questions of fact, 105 C 361

finding of agency or bailment is conclusion of fact to be tested by the subordinate facts, 105 C 429

whether workman was employee or independent contractor presents a reviewable conclusion, 105 C 545

finding that board not burned by fire cannot be reviewed where board, which was before trial court, is not before Supreme Court, 105 C 729

navigability of river is conclusion of fact, 106 C 315

residence and incompetency as ground to appoint conservator are conclusions for trial court, in absence of some error of law, 107 C 1

finding of abandonment of husband by wife is conclusive, 107 C 101

conclusion as to existence of probable cause in malicious prosecution, 107 C 294

finding de nature of payment as a tax is a reviewable conclusion from subordinate facts, 107 C 312

conclusion as to intolerable cruelty one of fact and only reviewable if legally or logically inconsistent with subordinate facts, 107 C 484

when finding as to intent is conclusion, 107 C 640

that plaintiff was procuring cause of sale is conclusion of fact, 108 C 142

——reviewable only if it violates law, logic or reason, 108 C 142

finding of waiver is one of fact, 108 C 349

court could not find that ante-mortem statement was made unless it sees or hears statement, 109 C 124

conclusion that shooting done with malice aforethought and intent to kill inescapable when accused killed without extenuation and with own pistol, 109 C 124

requested correction to show money due for labor and material as affecting equity in building, refused, 109 C 362

finding of agency not reviewable where legally consistent with subordinate facts, 109 C 441

that defendant in action to quiet title occupied land adversely because of fence, refused, 109 C 451

finding de location of fence as to adverse possession *held* not justified, 109 C 693

finding that certain documents which improperly were given to jury did not influence them, 109 C 723

of breach of warranty justified by subordinate facts, 110 C 49

claimed representation by buyer of machine not admitted or undisputed, 110 C 49

of insolvency of bankrupt at time of attachment, justified, 110 C 125

that accused's residence in another State not bona fide *held* supported by subordinate facts, 110 C 348

finding of intention as regards giving of note and mortgage in payment of debt conclusive, 110 C 674

where evidence was in disagreement as to value of land before and after taking finding not corrected, 111 C 237

reasonableness of use of stream by riparian owner is reviewable upon basis of subordinate facts, 111 C 352

finding of what physical facts showed will not be corrected, 111 C 727

reasonable compensation for trustees, reviewable only if trial court could not reasonably and legally reach its conclusion, 112 C 497

conclusion that bankrupt was solvent when he made mortgage upheld, 112 C 643

conclusion that plaintiff made no representations of value of stock sold *held* supported by evidence, 113 C 258

finding in jury case corrected by adding verbatim report of proceedings to present question of judicial notice taken of document, 113 C 408

determination of question of intent not reviewable unless conclusion not reasonable, 114 C 612

finding that landlord did not accept surrender of leased premises upheld, 114 C 622

conclusion of negligence of packer in using loose piece of tin to close vent in canned goods sustained, 115 C 266

appeal from board of relief; conclusions which are obviously made upon all the evidence are not reviewable only upon the basis of subordinate facts found, 115 C 578

where court stated values of property as conclusions but they were not deductions from other facts found, court treated them as findings of subordinate facts, 115 C 581

that highway commissioner did not have actual or constructive notice of defect in highway, refused, 116 C 241

findings that market value of property was same before as after new street line and that damages and benefits were equal no basis for conclusion that they were each one dollar, 116 C 402

——both might be true and yet both damages and benefits amount to considerable sum, 116 C 402

——court failed to regard damages and benefits as to be separately determined, 116 C 402

had trial court found that moving street line to conform to building line resulted in no decrease in value of property, conclusion of nominal damages might be justified, 116 C 402

——and assessment of nominal benefits would have been harmless error at worst, 116 C 402

subordinate facts justified conclusion that use of park for playing professional games and for dog pound was not public nuisance, 116 C 426

that cause of boats breaking away from dock was act of God (storm) and that defendant's employees did all that reasonably prudent men would do, justified by facts, 116 C 496

that car was in substantially same condition as at date of purchase, under Sales Act, not supported by evidence, 116 C 579

——whether inference from six months' user of it admissible, quaere, 116 C 579

courts must necessarily rely on circumstantial evidence and may draw reasonable and logical inferences from facts existing prior or subsequent to event for purpose of reaching conclusion of fact, 116 C 661

——conclusion that defendant drove car at time of accident from position of body thereafter, 116 C 661

finding that plaintiff and defendants each signed under circumstances leading him to believe he was binding himself only as joint guarantor of note *held* not warranted, 117 C 24

where sale was oral and no notice of intent or bill of sale recorded, and corrected finding disclosed no actual notice to owner of store who leased it to vendor month to month, *held* conclusion that owner not entitled to protection of statute as creditor erroneous, 117 C 143

conclusion that plaintiff's intestate, not defendant, was driving car at time of accident, justified, 117 C 214

where nature of structures alleged were admitted by answer, issue was laid out of case; finding inconsistent therewith must be displaced by admitted statement from complaint, 117 C 249

finding sustained as to facts supporting conclusion that defendants kept and harbored dog at time it bit plaintiff, 117 C 307

conclusion justified that persistent and unfounded charges of adultery by defendant destroyed objects of matrimony and constituted intolerable cruelty, 117 C 310

conclusion that telephone conversation and letter constituted complete contract not mere offer, on facts upon which evidence was in dispute, sustained, 117 C 314

conclusion that bank knew P was insolvent at time of transaction and that it would result in its receiving preference sustained, 117 C 321

upon conflicting testimony, *held* that conclusion of court that defendants had failed to show location of ancient highway across plaintiff's land, not unreasonable, 117 C 402

conclusion that refrigeration equipment when installed was not defective, sustained, 117 C 460

finding of court de plaintiff's chain of title upon which it based conclusion that he was owner of strip of beach examined and *held* not justified, 118 C 137

that there was no actual fraud in lawyer getting mortgage from client, but only constructive, sustained, 119 C 254

conclusion that due notice of loss was given under surety bond not justified in absence of unequivocal finding of date of discovery of loss, 119 C 270

conclusions that defendants' use of word "Yale's" did not injure plaintiff's business or confuse public was finding that plaintiff had not sustained burden of proof on these issues, 120 C 373

conclusion that contractor had failed to furnish stone to subcontractor of size called for by contract sustained on conflicting evidence, 121 C 492

conclusion of intolerable cruelty justifying divorce conclusive unless illegally or illogically drawn, 121 C 501

determination of value is expression of court's opinion aided ordinarily by expert witnesses, and reached by weighing these opinions in light of all circumstances and its own general knowledge of elements, 122 C 228

finding as to what interest was conveyed in deed was one of subordinate fact, not conclusion, 123 C 140

findings having to do with character of scars left by wounds to plaintiff's face and effect on her appearance, were based on court's observation and could not be corrected though not in accord with testimony, 123 C 308

vitiated by improper consideration by court of statement in report of committee in earlier case, 125 C 85

where several persons were charged with breaking and entering and one secured ad-

mittance to building without breaking and then admitted others, all being equally guilty, claims of correction in the finding as to way in which door was forced open, are immaterial, 125 C 210

which of two brokers was procuring cause of sale a conclusion which stands unless illogically or illegally reached, 125 C 278

inconsistency of testimony of defendant and witnesses with statements made out of court concerns weight to be given testimony by trial court; finding not corrected, 125 C 354

reasonable conclusion of trial court that words and conduct of principal reasonably interpreted did not constitute revocation of agency, must be sustained, 125 C 577

where accused in criminal case assigns as error that on all the evidence he could not be held guilty, finding only serves to show conclusion of court upon facts as to which evidence was conflicting, 125 C 732

——where defendant does not rely upon any such facts, no occasion to consider corrections in finding, 125 C 732

in view of possibility of distortion of perspective in photographs of court room, they cannot prevail over express finding that accused could see and hear witnesses against him, 126 C 42

where as matter of law one was agent of another, corrections of finding bearing upon the issue of that agency are of no consequence, 126 C 81

conclusion that certain indorsements on note were forgeries sustained, 127 C 144

——and that agreed purpose of second note was to cover amount of defalcation not covered by first note, 127 C 144

relationship of master and servant a conclusion of fact; if unsupported by subordinate facts it is erroneous as matter of law, 127 C 181

where executors sued on basis of a loan made by deceased to defendant, failure to find that she made a statement to this effect would be merely an evidential fact insufficient to overcome finding based on other circumstances, 127 C 714

whether there was common ownership or control of a corporation and a partnership was conclusion of fact and not within proper function of Supreme Court, 128 C 213

conclusion that mutilation of note was not intentional was finding of fact based on evidence and not upon subordinate facts found, 128 C 248

finding that board did not continue suspension, stated among subordinate facts, is prima facie a finding of a primary fact and not a conclusion, 128 C 463

opinion expressed by executor that all institutions on list were charitable as distinguished from benevolent, though it came in without objection, not sufficient for finding to this effect in absence of testimony as to its basis, 128 C 646

finding of court, on which it reopened judgment and fixed new law day, based on statement of defendant's counsel only, disregarded and did not establish fraud, accident or mistake, 128 C 697

where file in libel action was an exhibit, statement taken from memorandum of decision which was not a special finding in the judgment improperly put in finding, 129 C 189

questions of employment in violation of statute (involving question of agency) and of contributory negligence were disposed of by finding, which was supported by evidence, 129 C 439

§ 27(9). Particular Cases—Negligence

cause of injury, 66 C 74, 75 C 381

standard of duty is for court, its exercise for trier, 67 C 42

elevators and machinery, 69 C 454, 75 C 150, 80 C 252, 83 C 20

whether negligence caused injury is question of fact, 71 C 688, 83 C 20, 326, 84 C 1

cake of ice jolted from wagon, 72 C 397

failure of street car to give signal, question *held* matter of law, 73 C 249

injury by fall or accident on highway, 74 C 554, 83 C 73, 85 C 579, 88 C 256

injuries by elevators and machinery, 75 C 140

whether reasonable safety of highway requires railing, and whether want of it was cause of injury, 75 C 288

whether highway is in good repair, 75 C 288, 82 C 527, 89 C 24

whether employees are fellow servants or not, and nature of duty to be performed, 77 C 351, 79 C 498, 80 C 237, 87 C 149

street railroad operation, 79 C 73, 641, 85 C 641

contributory negligence of persons struck by street car, 82 C 170, 513, 86 C 131

whether servant assumed risk of employment, 82 C 277

whether risks of employment were extraordinary, 83 C 642, 84 C 269

injuries by highway defects, 89 C 24

finding as to speed and negligence not disturbed if conflicting evidence, 93 C 302

plaintiff jumping from running board of truck, in fear of collision with defendant's car, 100 C 189

——finding of negligence is conclusive unless contrary to law, logic or reason, in view of subordinate facts, 100 C 189

finding of negligence is a conclusion of fact, 105 C 553

in negligence, where measure of duty and extent of performance together present a

single question, trial court's determination is conclusive, 105 C 625

conclusions as to negligence and contributory negligence not ordinarily reviewable, 108 C 602

that accused was guilty of gross negligence conclusive, unless unsupported by facts or resulting from incorrect rule of law or standard of conduct, 109 C 490

that neglect of defendants to maintain wall in safe condition was cause of accident, correct, 109 C 662

finding that automobile going at certain number of miles or less *held* not justified where only supported by inferences without direct evidence as to speed, 110 C 273

finding as to negligence is conclusive unless court applied wrong standard of duty, 114 C 639

that employee saw particular depression in highway which caused accident, refused, 116 C 241

de condition of dock from which boats broke away in storm and conduct of defendant's employee, refused, 116 C 496

guest statute case; previous conduct of defendant and warnings given her not material where finding negatived reckless misconduct as cause of accident, 116 C 672

that plaintiff looked to east after she stepped from curb refused where testimony was conflicting, 116 C 724

context of statement of plaintiff that he looked to west on crossing road such that court might have regarded it as deduction and not circumstance actually remembered; cannot be added to finding, 117 C 671

tire marks and fact that body had to be raised by crowbars not conclusive that defendants' truck was not on left of road at time of collision, as against court's finding, 118 C 124

court should have found that ladder slipped beneath weight of invitee as he left defendant's carload of grapes, 118 C 263

——material to negligence and contributory negligence and omission necessitated new trial, 118 C 263

province of trial court to determine credibility and truth of plaintiff's testimony; conclusion that hole in highway caused plaintiff to lose control of car sustained, 118 C 285

——also conclusions as to character and location of hole, 118 C 285

conclusion of court as to proximate cause of death is upon question of fact, not to be disturbed unless reasonable men could draw only one conclusion from facts, 118 C 419

conclusion that plaintiff's car was partly on left of center of highway, drawn from positions of cars after accident and from glass mostly on left side, *held* unwarranted, 118 C 468

whether conclusion that there was not such a condition as would have a natural tendency to create danger and inflict injury would be one of fact and hence not reviewable, quaere, 119 C 17

finding that floor was wet and slippery could not be corrected where based on conflicting evidence involving credibility, 119 C 332

where conflicting testimony as to which side of road was man with warning flashlight, court's finding must stand, 119 C 475

finding that headlights of truck threw beams into vision of plaintiff stricken out, where plaintiff himself and companion testified to contrary, 119 C 475

finding that defendant's employee built fire in barrel could not be sustained on evidence, 125 C 537

finding originally made by court that defendant had car under control and that it did not get out of control until brakes were applied, properly struck out by it, 129 C 60

that injuries to boy falling off bicycle were all on left side *held* not to indisputably establish way in which collision occurred, 129 C 493

findings as to circumstances of plaintiff's fall were supported by evidence sufficient to meet standard of proof, which produces a reasonable belief of probability of the existence of the material facts, 129 C 507

§ 28. ——Construction of Finding

that there was "no intolerable cruelty" negatives specific instances alleged, 43 C 273

"had in his employ," equivalent to a finding of relation of master and servant, 43 C 432

that choses were sufficient if collected to pay the debt, equivalent to finding that they were of value, 46 C 274

that land will probably continue to be used for railroad purposes, *held* an opinion, 49 C 41

——if intended as a practical certainty, court should find facts on which it rests, 49 C 41

finding *held* not a finding of no negligence, but only a statement that nothing was found, 50 C 344

language of finding *held* not to import an abandonment of dam, 51 C 7

implication inconsistent with main facts to be construed in harmony with such facts, 51 C 394

statements in, not equivalent to finding of neglect of official duty, 51 C 424

"that there was not legal evidence of a judgment," interpreted, 51 C 543

that husband occupied farm with wife's consent and from rents and profits in connection with his own labor, had become owner

of the personal property, *held* to mean that he had acquired the property from use of his wife's property as trustee, 52 C 531
certain finding *held* not to show existence of undue influence, 54 C 121
court found no evidence that the defendant had power to bind the company and added, "I find that he had no such power" *held* not to be inferred that court found want of power from mere absence of evidence, 55 C 214
——such finding *held* conclusive, 55 C 214
that motive of publication was wrong, improper and unjustifiable is a finding of "malice in fact" in libel suit, within the statute, 60 C 492
——such finding *held* warranted as based on legitimate evidence, 60 C 494
every presumption supports finding, 64 C 480, 66 C 78
construction of phrase, "court overruled claims of law," where these were based on facts claimed to be proven, 66 C 67
——of finding that there was no evidence on certain point, 76 C 131
——of "most probable cause," 69 C 341, 73 C 424
——of "mentally incompetent," 75 C 136
——of "then determined" as applied to act of officer de relaying of pavement, 78 C 689
——"practically" as equaling "purely," 81 C 461
——in jury case, of phrase that "plaintiff offered evidence to prove and claimed to have proved," 84 C 1
failure to find as to one of several articles the value of which is stated, equivalent to finding it valueless, 72 C 118
finding that appellant did not take appeal within proper time as finding form of attempted appeal to be defective, 72 C 329
to be read to uphold judgment, 73 C 423, 590 75 C 335, 76 C 131, 89 C 359
——in light of general knowledge, 65 C 395
——of presumption, 66 C 376
——of evidence certified up, 71 C 669
——in connection with paragraphs of draft finding marked "proven," 89 C 243
——to harmonize with title alleged and admitted, 83 C 204
finding that attorney was authorized to represent party is a conclusion of fact, 74 C 247
implications outside scope of inquiry of trial court disregarded, 77 C 294
construed to support admitted allegations, 83 C 204
where judge finds that plaintiff offered evidence and claimed to have proved his allegations, error was found in direction of verdict for defendant, 84 C 2
finding based on inadmissible evidence not sufficient to permit court to determine validity of contract; new trial necessary, 84 C 694
finding *held* to be of such a kind as not to require reversal on ground that court could not have reached such a conclusion, 85 C 102
direction to annex testimony to finding construed as not imposing expense of printing on State, 87 C 334
finding that an architect's decision was not fair is not a finding that he committed fraud, 89 C 172
expressions in finding construed in harmony with judgment despite trifling variations, 89 C 359
can assume fact in finding properly found, if evidence not brought up to correct finding, 90 C 133
finding that wife abandoned husband assumes that there was legal marriage, 90 C 210
failure to state precise date of occupancy *held* not to destroy finding of adverse possession, 90 C 241
cannot assume in absence of finding to that effect that certain facts were found unless they were undisputed, 90 C 539
finding that certain testimony is true does not establish existence of facts to which the testimony relates, 91 C 226
in jury case, may be read in light of charge, 92 C 261, 604
——where subordinate facts conclusively establish ultimate fact, court will regard latter, 92 C 587, 693
express finding that A gave credit to B not necessary if facts as detailed preclude any other conclusion, 92 C 587
statements in charge are assumed to be correct for purpose of aiding in interpreting finding, 92 C 604
facts *held* not to mean that plaintiff did not rely on garage company to do welding, but merely authorized it to employ competent man, 94 C 520
statement, when interpreted by its context and memorandum of decision, *held* not to be at variance with evidence, 94 C 533
read as a whole and in light of memorandum of decision, if that be made a part of it, 94 C 533, 95 C 40
statement that a contractor spent a definite sum carries inference that the expense was reasonably incurred for its avowed purpose, 94 C 661
fact that surety company asked to be changed on bond not inconsistent with finding that company neither called bond nor cancelled it, 95 C 10
finding that there was "no evidence" *held* to mean no oral or documentary evidence, 95 C 40

must be read with the memorandum of decision, 95 C 40
sufficient if jurisdictional fact found true in judgment file; finding may be aided by judgment, 95 C 88
statement purporting to be conclusion from subordinate facts is really one of law, 95 C 273
finding that two written notices were given leaves no room for claim of implied notice, 95 C 445
statement that the facts occurring after a certain date were "not important," shows that they were considered, not disregarded, 95 C 445
finding as to rulings on evidence may be helped out by transcript of evidence printed on appeal from action on motion to set verdict aside, 96 C 30
finding to be taken as correct statement of fact; evidence disregarded, 96 C 444
statement that plaintiff not guilty of contributory negligence to be read as a whole and to be reasonably construed, 98 C 98
——single clause not to be used as basis of meticulous attack on conclusion, 98 C 98
facts to be taken as found in absence of motion to correct, 98 C 352
if subordinate facts but partly stated, finding is to be taken as made, 98 C 380
finding that it cost $325 to bring building up to represented rental value as marking difference between actual and represented value, 101 C 427
in action for fraud in representing rentals, finding that they were "$25 or $30" construed to mean latter, 101 C 429
finding that plaintiff was hanging clothes "in the ordinary way" as indicating ordinary care, 101 C 568
finding that automobilist was driving "carefully," "with care and skill," 105 C 556
conclusion of trial court that certain evidence should be "disregarded," construed, 106 C 665
meaning of finding that driver of automobile "lost control" of it, 107 C 88
such facts as party appearing in his own behalf may establish not to be unduly narrowed, 107 C 374
finding that negligence contributed to produce accident, implies that otherwise it would not have occurred, 108 C 704
"creditors" in finding included those who might thereafter become such, 110 C 314
written agreement prevails over inconsistent statements in finding, 111 C 709
finding that automobilist could not avoid accident construed to mean that she could not have done so in exercise of due care, 114 C 728
that driver of bus did not invite plaintiff to place of danger interpreted as meaning that latter was not invited to cross road in face of known danger, 116 C 210
finding that C was estopped to deny mother's ownership of car and fact that she had attachable interest in it is finding of immaterial fact where plaintiff in replevin did not derive title through, 117 C 159
statement that C testified that he was conditional owner of car, etc., not finding to that effect, 117 C 161
that parties at time of marriage were and still are residents of this state interpreted to mean domiciled here, 119 C 197
conclusion of court that landlord was negligent because of failure to provide adequate lighting for entrance way and because it was so poorly constructed as to be dangerous, construed, 119 C 465
that any salaries not drawn should accumulate and be paid as receipts or earnings subsequently permitted, construed, 120 C 221
when finding states facts contrary to allegations of complaint, though statements not supported by testimony, finding *held* to amount to conclusion that plaintiff failed to prove allegations of his complaint, 120 C 373
finding that burning of house had brought about substantial failure of consideration equivalent of finding that vendor no longer able substantially to perform, 120 C 390
Supreme Court may interpret conclusions of trial court in light of its memorandum of decision, 120 C 696
that driver "pulled not more than one foot to his left of the center" construed to mean not that entire car was to left of center but that left side of it was slightly to left of center, 122 C 259
where conclusion of trial court in doubt, omission of portion of original finding from substituted finding significant, 127 C 402
erroneous statement in finding as to direction pedestrian jumped to avoid being struck was inadvertent mistake which had no bearing on conclusion, 128 C 581

§ 29. Appeal from Action of Trial Court on Verdict; Taking up the Evidence

NOTE: For review of merits of action of trial court with respect to verdict, see VERDICT, § 16
judge need not expressly certify that verdict is against evidence, 5 C 74, 26 C 596, 27 C 114
statement of evidence by judge to be included in the motion for new trial for verdict against the evidence, 13 C 236
motion in nature of motion for nonsuit denied; all evidence not recapitulated, 33 C 269
the whole evidence should appear in record

to present claim of excessive damages, 54 C 436
appeal from nonsuit does not raise questions as to the admissibility of evidence and the like, 71 C 339
——nor does appeal from denial of motion for new trial for verdict against evidence, 66 C 265
——nor one from verdict directed, 91 C 430
all evidence must be a part of the record to review motion to set aside verdict, 81 C 556, 671, 82 C 615, 83 C 445, 95 C 208
new trial affords only remedy for refusal to direct, or for setting aside verdict, 81 C 578
only value of reciting all evidence on appeal is to permit granting new trial, 81 C 578
to review nonsuit on appeal, entire evidence must be printed, 82 C 132
appellant must furnish at his expense copy of evidence to review judgment of nonsuit, 82 C 142
evidence must be made part of record, 82 C 615
to pass on the evidence it must be presented in the record, 82 C 653
all that is necessary to review direction of verdict is finding containing evidence and rulings; where evidence is summarized by judge and finding so made is inaccurate, it may be corrected by filing statement of all evidence and rulings, 82 C 666
judge is not required to certify the evidence until a copy or statement has been given him, 83 C 316
evidence must be certified by stenographer and trial judge and made part of record, 83 C 448, 714, 84 C 4, 87 C 333, 100 C 277
to present an appeal on direction of a verdict all the evidence and rulings may be certified; sometimes a summary of evidence sufficient but this is by agreement; one cannot have both methods, 83 C 713, 84 C 1, 88 C 94, 90 C 41, 95 C 208, 100 C 277
——but evidence may still be used and will control a summary made by trial judge, 82 C 666
appeal from refusal to set verdict aside; only pleadings, judgment and evidence made a part of the record; not charge or finding, 85 C 333, 87 C 328, 88 C 251
evidence may be considered in light of court's memorandum of decision, 86 C 99
refusal to set aside verdict on ground of improper remarks of attorney not reviewed unless the evidence is before the court and unless counsel objected to verdict, 86 C 100
court must review all the evidence in passing on motion to set aside, 86 C 319
appeal on ground that verdict is against the evidence in slander suit, does not raise question of privilege, 87 C 220
to pass on directed verdict all evidence or a summary necessary, 88 C 94
Supreme Court can say if verdict rightly directed or set aside when it has all the evidence, 88 C 382
appeal from refusal to direct verdict not ground of appeal, 89 C 117
absence of evidence or summary of it prevents court from declaring direction of verdict erroneous, 90 C 41, 91 C 430
if no motion to set verdict aside, court will presume that it was supported by sufficient evidence, 91 C 266
procedure to review setting aside of verdict, 92 C 252
where verdict is directed, nothing required but certification of evidence and rulings, 95 C 208
in criminal and civil cases appellant is chargeable with cost of printing transcript of evidence if required upon his appeal, 95 C 451
public defender could ask court to print evidence at State's expense, 95 C 451
orders for transcript and printing of evidence in criminal case may be made on an adequate finding, but are reviewable only for abuse of discretion, 95 C 451
where demurrer is sustained and later, case proceeding because of other defendants, party demurring has directed verdict, appeal from verdict does not raise question of ruling on demurrer, 96 C 494
unless trial court otherwise orders, all exhibits should be printed where appeal is from directed verdict, 100 C 274
——stipulation that exhibits not printed may be used disregarded, as policy is to decide case upon printed record, 100 C 274
function of Supreme Court on appeal from denial of motion to set aside, in capital case, 103 C 453, 106 C 704
on appeal from refusal to set verdict aside, evidence is necessary, 103 C 678, 716
sufficiency of evidence to establish guilt beyond reasonable doubt in trial to court; how reviewable, 105 C 326, 109 C 126
when only question is on damages, judge should certify only the evidence relating thereto, 108 C 524
discussions of rulings on evidence, arguments and colloquies of counsel should be omitted from printing of evidence, 108 C 671, 112 C 120, 115 C 460, 125 C 266
where only attack on verdict is that it is excessive, testimony relevant to that issue alone should be printed, 109 C 484
printing of all evidence much of which has no relation to questions at issue criticized, 109 C 602
in absence of evidence denial of motion not open to review, 109 C 732
printing of testimony regarding damages

where no question as to them presented, criticized, 110 C 166
in criminal case sufficiency of evidence tested by appeal from denial of motion to set aside verdict, 114 C 456
no basis for reviewing action of court on motion to set aside verdict where evidence not certified, 115 C 672
plaintiff desiring to raise issue of verdict in favor of one of the defendants must move to set it aside, 115 C 678
statute affords only method by which appeal can be taken from setting aside verdict; does not authorize appeal for other cause than lack of evidence, such as errors in charge, 115 C 678
neither statute nor rules now limit time in which evidence shall be filed upon appeal from decision on motion to set aside verdict, 115 C 722
——and where there is no unreasonable delay, appeal will not be dismissed on that ground, 115 C 722
if appellant does not intend to rely upon claim that court should have set aside verdict he should not have evidence printed in record, 116 C 32
where record did not contain evidence produced on trial, Supreme Court has no basis for determining whether trial court abused discretion in denying motion for new trial, 116 C 649
duty of official stenographer to make correction in original transcript of evidence where accuracy required, 117 C 5
——better practice to first submit correction to trial judge and obtain his certificate in addition to that of stenographer, 117 C 5
on appeal from denial of motion to set verdict aside, legal sufficiency of pleadings not in issue, 119 C 436
appeal from setting aside verdict presents broad question whether ruling is sustainable on any ground, 119 C 581
filing stipulation summarizing relevant evidence instead of printing entire evidence in appeal from decision on motion to set aside verdict commended, 122 C 338
from denial of motion to set aside verdict; statute requires that evidence shall be printed at expense of appellant; court refused to waive requirement, 124 C 554

§ 30. Assignment of Errors

§ 31. ——In General

nothing of which advantage could be taken below is assignable as error, 5 C 543
——nor anything contradicting the record, 5 C 544, 16 C 43
nothing is assignable as error, which is to party's own advantage, 8 C 501
——nor anything not prejudicial to him, 8 C 501
court will hear only the errors specially assigned, 10 C 370
——but may pass upon vital points not assigned, 10 C 371, 28 C 114, 44 C 121
exceptions not taken on trial or specially assigned are not properly before court, 10 C 393
the particular error relied upon must be assigned, 15 C 98
slight amendment of finding does not extend time for filing reasons of appeal, 54 C 117
——proper course for appellant desiring further time, 54 C 118
——plea in abatement lies where reasons of appeal are not seasonably filed, 54 C 117
prolixity in assignments discountenanced, 70 C 648
specific assignment following general limits it, 74 C 418
rule applies to writ of error, 75 C 76
——but as to appeal from nonsuit, see 76 C 41
question of constitutionality of statute not considered unless included in assignment of errors, 75 C 192
court may regard errors not assigned, 75 C 218, 77 C 382, 82 C 214, 227, 641, 84 C 216, 93 C 706
——as where public interest is involved, 85 C 399
——or question of practice frequently arising, 67 C 278
——or error is apparent, 85 C 679
——and general assignment may suffice where judgment is clearly wrong, 66 C 574, 67 C 222, 75 C 188
——or in view of duty of court to see that parties are heard, 67 C 18
——or large amount is involved, 74 C 252
——or finding fails to state correctly claims of law, 72 C 20
——but not if substantial justice has been done, 93 C 697
amending reasons of appeal, 79 C 317
unwarranted conclusion not assigned as error, disregarded, 81 C 442
a question must be settled by a judgment in order to permit an assignment of error on appeal, 81 C 443
assignment of error not supported by record avails nothing, 81 C 532, 82 C 547, 84 C 70, 93 C 302
additional reasons of appeal not allowed unless seasonably filed, 83 C 320
reasons of appeal not urged orally or in the brief are treated as waived, 83 C 417
variance must be assigned, 83 C 458
plea in abatement not proper method to erase one or more assignments of error, 83 C 466
——so claim not assigned and contradicting that assigned, 79 C 315
motion to amend assignment of error not filed until after term to which appeal is taken has expired, comes too late, 84 C 209

limited to claims of law made in trial court, 84 C 648
on appeal where only error assigned is overruling of demurrer, other matters affecting equity of parties cannot be considered if they do not appear in complaint or subsequent pleadings, 85 C 379
cannot assign that court erred in permitting recovery on pleading if complaint sets out good cause of action and there is no demurrer or motion to arrest, 85 C 512
no objection being made to form of appeal, question inartificially raised will be considered when error is apparent, 85 C 679
appeal to April term but finding not completed until after; reasons of appeal amendable within ten days after finding filed, 86 C 100
assignment of point of law must have the point included in the request for finding, 86 C 453
claim not in assignment of error and not made in court below is not reviewable on appeal, 87 C 70
questions of law not assigned in appeal and not raised by instructions requested, are not considered, 87 C 165
assignment based on failure to charge in matters not requested are not well taken if charge as a whole is sufficient, 87 C 406
inadequacy of finding will not avail, if error not assigned, 88 C 8
question of law not raised in assignment of error not reviewable; must be raised at trial and must be directly and specifically stated in appeal, 88 C 109
correction of a finding can only be secured if error is assigned, 88 C 130
assignment of error not supported in record disregarded, 88 C 528
under claim of error in charge, party cannot have advantage of misunderstanding of it by jury, 90 C 381
assignment not pursued in argument is waived, 92 C 579
only errors assigned considered, 94 C 258
reasons of appeal not mentioned in brief considered abandoned, 94 C 521, 95 C 378
assignments that present question of fact disposed of by finding not considered, 94 C 659
on appeal from action of court on writ of error in summary process, no specific assignment required, 95 C 281
——from justice of the peace, 95 C 281
where injunction decree was only attacked as a whole, the court nevertheless directed a modification of it, affirming it otherwise, 96 C 272
necessary to secure correction of finding, 97 C 252, 308
failure to make finding is not assignable error, 97 C 281
appellant confined to claims of errors specified in his assignment, 98 C 397
imperfect assignment disregarded and real issues decided in matter of public concern, as in tax appeal of importance, 99 C 341
all assignments which are to be pursued should be specified; penalty for failure to do so is loss of costs, 99 C 523
assigning error in refusal to change finding, before its refiling, is premature but harmless, 99 C 642
Supreme Court may, but is not bound to, consider errors defectively assigned, 100 C 69
conclusion of compensation commissioner from subordinate facts is assignable as error in law, 102 C 471
in criminal case tried to court error may be assigned that evidence did not establish guilt beyond reasonable doubt, 105 C 326
that verdict is against weight of evidence is not good assignment, 105 C 366
question of jurisdiction will be considered, even by court of its own motion, though not assigned, 105 C 503
important matter may be considered though not assigned as error, 108 C 454
in criminal case tried to court, assignment that evidence does not support judgment takes place of motion to set verdict aside, 109 C 124
requiring court to review evidence to determine its weight, improper, 109 C 505
multiplicity of, should be avoided, 109 C 507
court considered assignments of error not in proper form where layman prepared his own appeal and conduct of county bar was involved, 111 C 52
plea in abatement granted where assignment was not filed with appeal, in case where no request for finding made, 113 C 780
assignments of error not relating to questions of law stated in request for finding will not be considered, 114 C 72
sufficiency of evidence in criminal case tried to court tested by simply assigning question as reason of appeal, 114 C 456
reasons of appeal not considered, where no exceptions or evidence relating thereto were filed, 114 C 711
predicated on court's conclusion that accused was guilty raises question to be considered on all the evidence; consideration of correction of finding unnecessary, 115 C 306
where finding is necessary, assignment is to be filed within ten days from filing of finding, 116 C 160
——if court makes changes in finding, additions to assignments may be filed, but only as amendments to original assignment, 116 C 160
——but this does not postpone time of filing original assignment, 116 C 161

errors assigned in charge but abandoned in brief, not considered, 116 C 471
based on ruling on demurrer to original complaint which was later amended has no place in appeal, 117 C 67
where no assignment of error in refusal to set aside verdict is made, ruling on it and issue of whether defendant's was family car, not presented, 117 C 543
in absence of appropriate assignments of error, or a showing that appellant may have suffered prejudice, omissions in charge will not be held to be reversible error, 118 C 210
claim not considered where not raised in court below or in assignments of error, 118 C 220
where court directed verdict, assignments directed to refusal to charge improper, 118 C 544
assignment of error not pressed in brief or argument will not be considered, 119 C 437
denial of motion to dismiss information, and to direct verdict not assignable as error, 119 C 437
corrections in finding not considered where not referred to in assignment of errors, 119 C 649
assignments of error raising questions not presented upon trial not entertained, 120 C 223
sweeping assignments, made either with intention not to press many of them or without sufficient consideration, are not proper practice, 120 C 618
evidence annexed to, in absence of countervailing evidence made part of record by other party, assumed to be all the relevant testimony, 120 C 687
corrections in findings of compensation commissioner should be sought by appellee by assignment of error, not by bill of exceptions, 122 C 129
assignment that court erred in finding ultimate conclusion does not change nature of finding from one of subordinate or primary fact to a conclusion, 123 C 140
in absence of assignment of error addressed to charge it is to be assumed that jury were correctly instructed, 123 C 337
though defective in failing to set forth precise error stressed on appeal, court considered fundamental error when appellant suffered prejudice, 123 C 646
——where this will be done, 123 C 655
seeking corrections of finding, so numerous as to constitute "wholesale attack," open to criticism, 124 C 639
thirty-six assignments, only seven of which are pursued, puts undue burden on other party, 125 C 45
party should assign as error only those additions or corrections in finding which he proposes seriously to present, 125 C 274
conclusion of trial court not assigned as error cannot be reviewed, 125 C 312
court not bound to consider errors unless specifically assigned; but will do so where matter of public importance or to prevent manifest injustice, 125 C 313
not good practice to assign errors which have so little substance that they are not pressed in the brief, 126 C 700
in proper case supplemental proceedings following a judgment may be assigned as error in appeal from judgment, 129 C 374

§ 32. ——Form and Contents

joinder of errors in fact and law will not vitiate if errors in fact be immaterial, K 30
on a general assignment of errors, appellant cannot urge special errors, 10 C 370
general assignment of error brings up sufficiency of declaration, 26 C 581
assignment of error *held* too loose, 28 C 117
that judgment on the facts should have been the other way, too general, 40 C 87
a general assignment of error will not be considered under statute, 60 C 490
——nor error in charge assigned as beginning with a certain clause and ending with another, 61 C 7, 9
errors must be specifically assigned, 64 C 378, 391, 68 C 89, 70 C 429, 75 C 82, 192, 76 C 356, 651, 79 C 688, 80 C 86, 83 C 417, 84 C 640, 85 C 394, 444, 86 C 275, 88 C 109, 89 C 549, 606, 90 C 670, 91 C 411, 448, 542, 92 C 208, 579, 93 C 90, 382, 449, 97 C 308
assigning error on evidence where pleadings present question is incorrect, 67 C 74
assignment containing several claims is defective, 68 C 2
assignment that court erred in conclusion upon the evidence too general, 70 C 99
——so statement of general claim, 72 C 356, 74 C 247, 286
misnomer of doctrine appealed to immaterial, 72 C 343
reference to finding may be sufficient, 73 C 436, 85 C 444
——but assignment of error in charge as set forth in finding is too general, 84 C 117, 91 C 668
——also rulings of evidence contained in it, where there are several, 80 C 112, 82 C 214, 647, 89 C 321, 90 C 546
——also claims of law where in a paragraph there are several, 77 C 485
assignment should not separate charge into fragments, 74 C 525
——but assignment that charge did not fully present issues too general, 68 C 428
——also that charge is erroneous, 76 C 356, 77 C 295, 79 C 535, 80 C 112, 212

——also that charge as to burden of proof is erroneous, 72 C 306
——also that judge did not grant requests to charge, 77 C 398, 80 C 87, 83 C 110
——particular defect in charge or failure to charge, should be pointed out, 82 C 484, 624, 83 C 417, 84 C 640, 85 C 679, 92 C 256, 579, 93 C 449
——so reference to paragraph of charge containing several propositions is bad, 85 C 359
claims must be distinctly stated, 75 C 192
specific assignment defined, 77 C 485
character of claimed error must appear, 81 C 14
should directly assert error; assignment in form of quaere is bad, 81 C 656, 83 C 183, 516, 85 C 679, 90 C 41
particular rulings of evidence that are to be attacked must be pointed out, 82 C 214
assignment of error that court failed to charge as requested too general, 83 C 110
assignment in criminal case merely setting forth claim of State is insufficient, 84 C 152
errors in charge should be assigned as such, not as errors of court in permitting a recovery, 85 C 512
assignment of error as to exclusion of testimony contained in stenographers' notes, fails where they contain several rulings, 86 C 276
——so one of error in rulings and instructions contained in record and bill of exceptions, 86 C 289
that plaintiff could not recover on complaint too general, 88 C 64
assignment of error must specify precise question and answer to be reviewed where there are several in paragraph, 89 C 321
assignment seeking correction in finding should point to specific paragraph attacked, 90 C 444
assignment of error must specify the particular events and declarations of intention which it is claimed were improperly admitted, 90 C 546
that appellee did not prove case and that judgment should have been for plaintiff, too general, 92 C 208
assignment improper that court erred as set forth in numbered paragraph which contained whole charge, 92 C 256
workmen's compensation case; assignment that commissioner's finding not warranted by evidence ordinarily presents no question, 93 C 90
assignment of error should state distinctly how the finding is to be corrected, 93 C 317
assignment that charge inexplicit and unintelligible, or that it was argumentative and favored claims of one side, too general, 93 C 382
no appeal on charge if no specific error pointed out, 93 C 382
grounds for each exception must be stated, 94 C 533
appellant cannot cull out isolated portions and charge error as to them alone, 95 C 112
assignment that court erred in rendering judgment is improper, 95 C 173
form to secure correction of finding, 97 C 222
assignments must be distinct or specific; that court erred in rendering judgment is too general, 97 C 308
claims of fact, though called claims of law, are not available, 97 C 308
must state the error complained of distinctly and specifically, 98 C 308, 524, 99 C 184, 594, 100 C 535, 101 C 567, 658, 103 C 249, 279, 104 C 112, 111 C 106, 112 C 152
assignments of error covering practically entire charge violate the rules and do not merit consideration, 98 C 524
that court erred "in holding and finding" of this and that, does not properly present a claim for a change in the finding as made, 98 C 761
that finding "without sufficient evidence" and "contrary to facts as proved" is improper, 98 C 808
——so that there was no "legally sufficient evidence or proof," 98 C 808
assignment intended to attack conclusions of fact should follow reasons which are set forth in rules, 99 C 55
assignment claiming that fact found without evidence "reasonably to support" it or not found where evidence "reasonably supports it" improper, 99 C 62
assignment seeking correction of finding must be direct and not argumentative, 99 C 178
assignment should disclose whether claim of error is in finding fact, in law, or in conclusion from subordinate facts, 99 C 181
assignment of error that charge as a whole is inadequate, too general, 99 C 484, 683, 726, 100 C 174, 104 C 404, 519, 585, 106 C 119, 153
assignments merely quoting section of charge, insufficient, 99 C 583
error in drawing ultimate conclusion of fact is to be reached only as error of law and should be so assigned, 100 C 57
should assert the error directly and not in form of quaere, 100 C 68, 101 C 310
that court erred "in rendering judgment," "sustaining appeal," and in holding finding and award in compensation case not in accordance with subordinate facts, are inexcusable, 100 C 533
refusal of trial court to correct finding on conflicting evidence or where immaterial should not be assigned, 100 C 607

use of phrase "against the evidence" sufficient where plaintiff moves to set aside verdict because damages inadequate, 100 C 613
where conclusion is attacked error should be stated as one in "ruling" not in "finding" thus and so, 101 C 189
assignment "whether or not the court erred" is improper but may be considered in court's discretion, 101 C 310
——may be considered so far as it raises material questions of law, 101 C 310
must follow appropriate paragraphs of motion to correct finding, 101 C 349
that court erred in rescinding and vacating judgment is insufficient, 101 C 658
that conclusion improperly drawn "under the facts in evidence" is improper, 102 C 609
that facts found "without sufficient evidence" or facts not found when "reasonably sustained by weight of evidence" are bad, 103 C 88
that court erred in rendering the judgment on file, is too general, 103 C 249, 279
mere statement that court erred in finding issues for one party, bad, 103 C 249
when entire evidence certified, desired corrections of finding must be distinctly stated in assignments of error, 104 C 300
claim that pleadings do not support judgment, how to be raised, 104 C 366
that relief granted was not warranted by allegations of complaint, is too general, 104 C 478
reciting so many statements from charge that court cannot tell which is complained of is bad, 104 C 519
when based on overruling of claims of law, assignments should refer to finding, not to draft finding, 104 C 696
assignment of error should refer briefly to rulings on evidence as stated in the finding, 105 C 249
assignment of error must not recite the evidence in extenso, 105 C 249
only errors specifically assigned considered, 105 C 415
——in compensation case assignment of error "in sustaining award of commissioner and in overruling claim of respondent" too general, 105 C 415
each assignment must contain only one claimed error, 106 C 205
when all the evidence certified for correction of finding, errors must be assigned in form approved by this court, 106 C 503
isolated excerpts from charge not properly assignable as error; nor separated portions grouped as though contiguous, 108 C 9
charge should not be attacked as generally defective on basis of few isolated portions, 108 C 454
that court erred in "admission and exclusion of evidence throughout the trial" is too general, 109 C 29
unnecessary prolixity, and allegations of error in single sentences of charge unintelligible without context, criticized, 109 C 517
that "the court erred in holding" or "not holding" that certain facts were proven will be disregarded, 110 C 4
reasons of appeal addressed generally to paragraph of finding stating numerous rulings is improper, 110 C 22
presenting a number of rulings for review in same paragraph, improper, 110 C 125, 278
improper to refer generally to errors in rulings on evidence in a certain paragraph of finding that includes several rulings, 110 C 278
irregularities in assignments of error not avoided where record does not show judgment clearly wrong, 110 C 699
form of reasons of appeal calling for correction of finding, 111 C 132
failing to specify wherein distribution of testate property is too vague, cannot be considered, 111 C 589
"whether or not the court erred" not proper practice, 112 C 25
long excerpts of irrelevant evidence in support of, improper, 113 C 145
assignment of error in "not charging jury more fully in regard to damages" and that charge was "inadequate, insufficient and not adapted to issues" too general, 113 C 145
ground of exception to ruling on evidence must be stated, 113 C 209
in form of quaere—"whether the court erred" —defective, 113 C 355
——but in exercise of its discretion, court overlooked defect, 113 C 358
exception on ground that finding was without "substantial testimony" or "convincing proof" improper, 113 C 610
assignment that the court erred in findings because there was not sufficient evidence to establish them, improper, 113 C 791
——or that the court erred in finding or failing to find proof of certain allegations or facts or in reaching certain conclusions from the evidence, 113 C 791
should be made to specific paragraphs of finding or draft finding to which addressed; adherence to Form D II, 113 C 791
errors in charge not ordinarily considered unless specifically pointed out, 114 C 652
——assignment that charge is inadequate as a whole not considered, 114 C 652
——nor is single assignment referring to successive and extended quotations and claiming them to be inadequate, 114 C 652
assignment of error in long passage of charge in which separate portions have been brought together, improper, 115 C 714
assignments seeking corrections in finding not referring to exhibits of testimony annexed improper; later filing extracts with state-

ment that each referred to all or certain of assignments improper, 116 C 210

under single claim that "court erred in charging jury as follows," and reciting extended quotations from charge without pointing out particular matter claimed to be erroneous, improper, 117 C 478

to be so made as to avoid unnecessary prolixity or repetition, 118 C 175

assignment purporting to be based on ruling on evidence faulty in not being predicated on question objected to and excluded, 118 C 681

it is never permissible or fair to trial court to detach certain portions of charge, incomplete in themselves, from their proper context, and present them as errors, 119 C 347

too general and obscure assignment not considered, 119 C 438

assignments of error in charge did not comply with rules, 120 C 263

where assignments directed to charge require portion of evidence, it should be in finding or should take form of exhibits referred to in and made part of finding, 121 C 361

including in a single assignment portion of charge de agency, covering page and a half of record, without indicating what was the specific objection, violated the practice, 121 C 554

allegation that court erred in failing to charge jury in adequate and sufficient manner, etc., too general, 122 C 529

practice requires specific assignment, 122 C 563

improper to include several rulings in single paragraph of finding with single assignment addressed to that paragraph, 122 C 608

correction of finding in jury case; not necessary to allege that fact was admitted or undisputed, but only that party claimed to have proved it and offered evidence reasonably supporting it, 123 C 27

inclusion in one paragraph of finding of numerous rulings with assignment of error referring generally to them, violates rules, 123 C 50

stating that court erred in failing to give such instructions as were correct in law, adapted to issues, and sufficient for guidance of jury, not specific and therefore improper, 123 C 173

must directly assert that court committed error in respects specified, 123 C 347

directed in general terms to single long paragraph in finding containing different rulings on evidence, improper, 124 C 15

that court erred in ruling that commissioner was not justified in concluding from all the evidence that defendant had regularly less than five employees too general to present claim for correction of commissioner's finding or error in decision of court correcting it, 125 C 28

that court erred in rendering judgment for defendant, too general, 125 C 620

assignment stating that charge is too general or too abstract does not comply with rules, 126 C 484

general assignment of error addressed to paragraph of finding as a whole is contrary to proper practice, 127 C 594

presenting more than one distinct ruling in a paragraph of finding, with general assignment addressed to paragraph as a whole, improper, 128 C 112

general assignment addressed to charge does not impose on Supreme Court duty to search out possible errors not specifically assigned, 128 C 241

assignments of error must be specific and in accordance with forms prescribed, 128 C 280

——one requiring search through long charge to determine points of claimed error improper, 128 C 282

——but court reviewed improper assignments to determine if substantial injustice was done, 128 C 282

no place in hearing in Superior Court on unemployment compensation assessment for assignment of error that court erred in refusing to find facts which were facts which upon record could have been found by administrator, 128 C 342

assignment attacking action of court in resubmitting case to jury with supplemental instructions, too general, 128 C 378

——but nevertheless examined to see if there was substantial denial of justice, 128 C 378

assignments of error referring to claims of law stated in draft finding regarded where they were same as those stated in finding to have been made, 129 C 348

§ 33. Memorandum of Decision

NOTE: Under the rules taking effect in 1931, the memorandum of decision was made a part of the record on appeal.

relation of judge's memorandum of decision and special finding to the finding, 64 C 439, 72 C 624, 73 C 590, 681, 75 C 92, 80 C 433, 86 C 235, 89 C 284

judge's memorandum of decision may be used as basis for claims of error in law and requests for finding, 64 C 439

memorandum of decision not finding; not part of record unless made so by court, 83 C 690, 85 C 261, 89 C 284

statement in memorandum of decision treated as an expression of a conclusion, not a fact, 86 C 235

memorandum of decision is not finding of facts nor part of official record unless made so by court, 87 C 608

finding not corrected by referring to memorandum of decision, 89 C 169
facts in memorandum of decision not reached in application to correct finding unless part of finding, 91 C 692
use of memorandum as indicating a conclusion of law controlling the finding, 92 C 378
finding read with memorandum if that is made part of it, 94 C 533, 95 C 40
reasons of appeal based on memorandum of decision not to be considered, 100 C 123
when memorandum in conflict with finding, latter prevails, 100 C 283, 102 C 152, 106 C 287
facts therein not to be considered unless memorandum is made part of finding, 100 C 283, 529, 102 C 439
memorandum should not be made part of finding when it discusses facts, 100 C 283, 102 C 152, 106 C 287
statements of fact made in memorandum denying motion to correct are in effect findings, 100 C 347
conclusions of trial court from referee's reports, expressed in memorandum, not reviewable, 102 C 96
refusal to incorporate memorandum in finding is not reviewable, 102 C 152
conclusion in memorandum of decision not reviewable unless it is part of finding, 102 C 439
when memorandum clarifies ambiguous ruling, it may be examined by Supreme Court, 104 C 152
memorandum of decision may be referred to to interpret finding, 106 C 512
memorandum stating or discussing facts should not be made part of finding, 108 C 285, 111 C 537
may be referred to for better understanding of finding, 113 C 647
to determine what standard of care court applied, this court may consult memorandum of decision, 116 C 511
where finding was silent as to issue upon appeal from zoning board but it appeared from memorandum of decision that ruling of board had factual support, appeal was dismissed, 117 C 533
may be resorted to for purpose of interpreting judgment findings, 118 C 163
memorandum of decision is not part of record available on writ of error, 119 C 420
Supreme Court may properly have recourse to memorandum of decision to ascertain basis of legal conclusion of trial court, 120 C 384
——but where statement in it differs from that in finding, latter must prevail, 120 C 384
Supreme Court may interpret conclusions of trial court in light of its memorandum of decision, 120 C 696
resort made of it, for better understanding of decision, 121 C 375
may be considered to show scope of inquiry upon which decision rested, 121 C 422
may be consulted to determine on what grounds finding rested, 122 C 64
may be referred to for better understanding of finding, 125 C 596
in original suit may be referred to in determining issue of res adjudicata in later suit, 126 C 354
memorandum may be consulted to understand court's decision, 126 C 664
erroneous statement as to direction pedestrian jumped to avoid being struck was inadvertent mistake which had no bearing on conclusion, 128 C 581
memorandum may be consulted to ascertain standard of care applied by judge, 129 C 76
memorandum should not ordinarily be made part of finding; illustration of unfortunate results, 129 C 438

§ 34. Bill of Exceptions; Cross-Appeal

bill does not enlarge judgment as to appellee if he does not appeal, and matter does not affect validity of judgment; may be filed after term, 72 C 562
it is ordinarily not necessary to pass on bill of exceptions if a new trial is refused, but it may be, 72 C 619, 79 C 470, 80 C 211
court should sign bill of exceptions to ruling, though point may be raised on trial, but, if it is, failure to sign is harmless, 73 C 378
is proper method to review interlocutory motion, 73 C 486
——but exception now only necessary as to matter of evidence, 89 C 49
——or in summary process, 85 C 618
not considered where new trial would be unavailing, 77 C 63
——or unlikely, 80 C 469
scope of bill, 77 C 70
not applicable to ruling on demurrer, 77 C 70, 89 C 291
bill addressed to ruling on demurrer to pleading replaced is not part of record, 80 C 552
effect of inserting all evidence in; court will not review determination of facts, 84 C 65
not proper method to raise question of mispleading, 85 C 595
at common law only way error in trial could be brought before appellate court was by bill of exceptions, 89 C 49
procedure for review of a directed verdict that is afterwards set aside, 92 C 252
setting aside verdict upheld where, on appellee's bill of exceptions, charge appears erroneous, 92 C 365

——and where trial court set aside directed verdict, new trial granted for error in charge appearing by bill of exceptions, 92 C 252
where court errs in setting aside verdict, and also in charge as to burden of proof, to disadvantage of appellee, new trial is proper, 93 C 542
on appeal from setting aside verdict appellee waives objection to adverse rulings unless he files bill of exception, 101 C 579
purpose not to review errors but to anticipate doubtful questions, if new trial is ordered, 106 C 411
not proper procedure on behalf of appellee on appeal from setting verdict aside; but statute should permit it, 108 C 680
decisions in course of trial or in charge are only matters entitled to appear in, 109 C 164
only rulings in course of trial may be presented; action of court in sustaining demurrer not reviewable, 117 C 111
——appeal from action of court upon motion to set aside verdict brings up only issue of sufficiency of evidence, 117 C 123
——if trial court is correct in setting verdict aside necessary judgment is "no error," 117 C 123
——situation is different as regards rulings on trial which are not controlling on second hearing, 117 C 123
where appeal is disposed of by direction of judgment and new trial not required, bill of exceptions need not be considered, 118 C 408
corrections in findings of compensation commissioner should be sought by appellee by assignment of error not by bill of exceptions, 122 C 129
where no error found in appeal, bill of exceptions not considered, 122 C 263
does not take place of an appeal but only authorizes an expression of opinion upon questions not presented by the appeal, in aid of new trial if one is ordered, 122 C 452
——proper course for appellee (defendant) to take in order to avail himself of claimed error included in bill of exceptions, should this court not order new trial, was to file cross-appeal from judgment, 122 C 452
——and court did not pass on questions raised by bill of exceptions where error was found and judgment directed for appellant, 122 C 452
where no error found, unnecessary to consider bill of exceptions, 125 C 586
when cross-appeal, based on error claimed in bill of exceptions, is proper procedure, 126 C 373
Form 651 of Practice Book (1934) not adapted to situation where on appeal from setting verdict aside, new trial is sought on basis of errors assigned in bill of exceptions even though setting aside verdict is found erroneous, 127 C 198

§ 35. Rectification of Appeal

application may be contained in appeal, how determined, 67 C 523
with what clerk papers are to be filed, 70 C 332
appeal transfers cause and motion to amend it should be made in Supreme Court, 72 C 86
court may correct on motion, without compliance with statute, 73 C 435
effect of failure to follow statute, 75 C 196
allegations of motion should be denied before argument, 75 C 675
——failure to do so, as admitting them, 73 C 691, 81 C 452
application to rectify, objection how made, depositions, 79 C 73
application to rectify appeal may apply to finding, 79 C 78
additional reasons of appeal not allowed unless motion seasonably made, 79 C 317, 83 C 328
——should be filed before record is printed, 72 C 86
allegations not denied taken as true, 79 C 705
——alleging lack of knowledge, 77 C 462
proper to correct appeal to show that error was induced by appellant, 79 C 705
service upon one of several counsel, 81 C 452
where facts otherwise sufficiently presented court will not correct appeal, 81 C 491
if decision from the judgment file is different from memorandum of court, application to correct judgment file is proper remedy, 82 C 376
will not be corrected to show it was taken to term already past and to which it was never intended to be taken, 83 C 134
if Supreme Court rectifies, facts taken as determined by it, 84 C 203
application to rectify appeal which is controverted by answer of opposing party under oath denied unless there is further proof than applicant's counsel's affidavit, 88 C 368
to correct a statement of what occurred in trial, remedy is application to rectify supported by affidavits, 88 C 558, 89 C 583
distinguished from motion to correct finding, 88 C 558, 89 C 583
this is proper method to secure correction of finding in jury case if the judge has not correctly stated the events of the trial, 92 C 154
appeal will not be rectified where it would not avail, such as, to include document ineffective as hearsay, 93 C 302
in criminal case, judge's statement of facts

claimed to be proven will be rectified only when necessary for presentation of case, 95 C 186

proceedings for rectification proper when correction desired depends on evidence outside the record, 100 C 505

application to rectify appeal; when and how to be made; depositions necessary if allegations of application are denied, 104 C 660

where claims of law omitted, or improperly stated, remedy is by exceptions or motion to rectify, 105 C 342

rectification as method to correct finding in jury case, 108 C 454

application for rectification is adapted to corrections requiring evidence outside record to establish what occurred on trial; agreement of counsel at trial, 111 C 342

no basis in record for use of exhibits before referee which were not annexed to remonstrance in connection with excerpts of evidence; application to rectify, denied, 117 C 138

court justified in omitting to insert in finding in jury case claims made on evidence offered which were not presented to it at the trial and not involved in issues appearing on face of record, 119 C 63

——in such case party may place evidence on record by having it printed, but unless claim was made on trial he may need to resort to rectification to bring matter before Supreme Court, 119 C 63

proceedings to rectify appeal cannot serve to import into record matter relevant to issues but never presented to trial court, 120 C 367

where plaintiff filed no request to charge with respect to delineation of intersection and after charge made no suggestions, only way he could attack finding as to his claims of proof in this regard was by motion to rectify, 125 C 37

proceeding to correct finding in jury case to show that party claimed to have proven certain fact is by application to rectify appeal, 125 C 180

only way to have stricken from finding fact that, under agreement of counsel, new trial was solely to determine damages, when it does not appear in record as stipulation or in transcript, is by rectification of appeal, 125 C 215

proceedings to rectify as applicable to secure striking out of matter as they are to adding it, 128 C 291

where it is necessary to get into record fact that question was contested, it may be accomplished by proceedings to correct the record, 128 C 656

only way to present claims of law which finding does not show were made at trial is by proceedings to rectify appeal, 129 C 11

§ 36. Error

§ 37. ——In General; Miscellaneous Cases

judgment for fine smaller than statute allows *held* a ground of error, 39 C 83

a severable error does not vitiate the whole judgment; the part erroneous is set aside, the rest stands, 58 C 375

where a judge in a court case has considered evidence not regularly before the court or ruled out, a new trial should be granted, 63 C 316

it is not error to refuse to certify evidence, 72 C 39, 82 C 145

it is error to overlook a statute, though not referred to, 72 C 157

defendant may have exception to order substituting new plaintiff, 73 C 384

it is error to fail to regard material facts, 73 C 573

it is error to find material fact without evidence, 73 C 692, 82 C 5, 84 C 92, 122

as to admission of evidence attacking credit, 74 C 425, 76 C 92

it is error to treat evidence as uncontradicted where facts contradict it, 74 C 468

it is error to treat case on wrong basis, 77 C 291

it is error to consider as evidence matter not in case, or to misconstrue purport of testimony, 77 C 688

it is not error to refuse to mark paragraph of draft finding as "proven," 78 C 179

if one ground is good for holding a pleading insufficient, there is no error, 81 C 646

it is error not to consider evidence for all proper purposes, 82 C 460, 95 C 445

judgment not supported by facts found is erroneous, 83 C 118, 87 C 617

judgment disturbed only for fundamental and substantial errors, 83 C 538

it is error to insert in charge issues not raised by pleading, 84 C 150

error not to find separate amount of damages as to the items proved, 85 C 212

if allegations are admitted, it is error to hold contrary to them, 85 C 215

error for trial court to supply an omission of fact in report of committee by inference, 85 C 390

no error in court permitting recovery on pleadings if complaint states good cause of action and no demurrer or motion to arrest, 85 C 512

appellant can only rely on errors involving substantial injustice for redress, 85 C 557

it is error to leave question of law to jury, 86 C 641

if error is severable court can set aside wrong part and affirm other, 87 C 253

it is error to direct verdict on erroneous assumption as to facts, 88 C 16

inadmissible evidence withdrawn by judge with direction to jury to disregard it, no ground of appeal, 88 C 177

error in matter of procedure does not require granting of new trial whether question properly presented or not, 89 C 46

judgment for defendant not error if any one of several defenses demurred to is sufficient, 90 C 492

decision of trial court on preliminary and collateral matters is not reversed except for manifest error, 92 C 58

——applies to decision permitting joint rather than separate trials; two accused can be tried together, 92 C 58

error to overlook statute, though neither parties nor court knew of it, 92 C 551

refusal of court to permit proper claim to be pressed in argument is reversible error, 93 C 107

question which trial court does not find it necessary to rule on is not assignable as error, 93 C 118

refusal to direct verdict not ground of error; 93 C 454

error not to consider facts relevant and material, 95 C 445

frankness on the part of the court in suggesting that a ruling is questionable is not ground of error, 95 C 503

erroneous conclusion from subordinate facts is error of law, 96 C 275

where demurrer of one defendant to complaint is sustained, but case goes on and verdict is finally directed for it, appeal from that verdict does not bring up question of correctness of ruling on demurrer, 96 C 497

in passing on demurrer, court not restricted to grounds considered by trial court, 96 C 542

judgment of trial court not disturbed if any principle will sustain it, 96 C 644

obiter dicta in trial court's memorandum of decision not basis of error, 98 C 397

in naturalization case erroneous rulings in interlocutory proceedings or as to evidence may cause reversal, 99 C 551

failure to consider material item of evidence is error, 100 C 251

no ground of error that court did not attach as much weight to certain testimony as appellant thought it should, 101 C 422

not ground of error for court not to incorporate memorandum of decision in finding, 102 C 152

where case is one of compelling equity in appellee's favor, claimed error of procedure cannot prevail unless rules of law absolutely require, 109 C 292

if the only conclusion legally deducible from the facts calls for judgment for defendant, one for plaintiff is error as matter of law, 109 C 577

permitting documents liable to influence jury improperly to go to jury room, 109 C 722

——question is not whether they did in fact influence jury for that is not open to inquiry, 109 C 722

where pleadings afford no basis for judgment, it cannot stand, regardless of soundness of reasons on which trial court based it, 110 C 669

ruling excluding evidence cannot be attacked on ground that it might have been admissible if offered for another purpose, 111 C 342

defendant in suit alleging various grounds of negligence, may take advantage of error as to one ground only; interrogatories unnecessary, 112 C 476

constitutionality of act or ordinance under which appeal is taken cannot be attacked in that proceeding, 113 C 49

——appeal from zoning board presents question whether it acted arbitrarily or so unreasonably as to abuse discretion, 113 C 49

where want of contributory negligence was alleged and denied and judgment found all issues for plaintiff, failure of court to find such want not error, 114 C 726

correctness of ruling on evidence is determined by the situation when evidence was offered, 115 C 226

——if later development makes it inadmissible objecting party should move to strike out, 115 C 226

where court properly set verdict aside because defective in form, not necessary to consider its ruling that verdict was against evidence, 115 C 704

error in conclusion of court that agent had authority where inadmissible testimony was admitted as to it, though court found other facts upon which it might have relied, 117 C 653

where two counts charged forgery, error as to third count charging perjury committed at later time would not necessarily invalidate judgment on first two, 119 C 455

——but since charges were so closely related, rule not applied except in event there was clearly no error as to first two counts, 119 C 455

where case was submitted on two grounds, negligence and wanton misconduct, and interrogatories showed jury found for plaintiff on both and that he was not contributorily negligent, errors assigned with reference to wanton misconduct will not be considered, 120 C 445

when statement by counsel of fact not in evidence is reversible error, 120 C 486

where none of reasons given by court in memorandum of decision as basis for judgment were correct, there was error, 121 C 592

where corrections in finding destroyed basis of court's conclusion, new trial must be ordered, 125 C 84

where admission of evidence depends on preliminary question of fact to be tried by court, its decision is not to be reversed unless in case of manifest error, 123 C 360, 125 C 739

charge submitting ground of recovery not claimed in complaint or appearing in plaintiff's claims of proof, reversible error, 126 C 635

error cannot be based on failure of court to consider decision upon similar state of facts in another jurisdiction unless law of that jurisdiction is involved in issues, 127 C 607

——still less upon its failure to consider facts involved in such decision, 127 C 607

error will not be found for exclusion of question which might have been admissible had certain claim been made for it, 128 C 181

§ 38. ——Harmless Error

See also CHARGE TO JURY § 3

§ 38(1). In General; Miscellaneous Rulings

new trial not granted if substantial justice has been done, 5 D 484, 3 C 405, 9 C 5, 11 C 358, 419, 22 C 87, 33 C 334, 34 C 500, 37 C 316, 46 C 136

new trial not granted unless error is prejudicial, 10 C 13, 14 C 191, 270, 17 C 417, 18 C 490, 25 C 223, 35 C 336, 37 C 398, 43 C 198, 51 C 273, 58 C 494, 59 C 115, 60 C 160, 482

mere formal error without prejudice is of no avail on motion in error, 14 C 334

informal answer to motion in arrest, or informality in judgment thereon is not ground of error, 18 C 90

a judgment is not to be set aside for mere formal error in record, 25 C 498

correct refusal by auditors to grant rehearing, on incorrect grounds, no error, 31 C 369

clerical error, writing "defendant" for "plaintiff," is no ground for new trial, 32 C 302

judgment not to be reversed if unaffected by the error, 46 C 373

motion for new trial granted unless clearly appearing that the error worked no hurt, 47 C 22

unintentional and harmless failure by judge to file written charge with clerk, not a ground for new trial, 49 C 463

judgment not to be disturbed if right, though the ground on which it is placed is wrong, 51 C 77

all facts made part of record may be used to show that error was harmless, 51 C 445

——though decision below was based on part only, 51 C 445

error which did not influence judgment, immaterial, 52 C 310

technical defect of parties, 52 C 329

where trial court commits error it is safer to grant new trial unless it clearly appears that no harm could have been done, 60 C 160

where a new trial was erroneously had on facts, and appeal was taken from rulings, error of no consequence, 61 C 402

——Supreme Court will consider only the facts found on the first trial, 61 C 403

new trial will not be granted where record shows error to be harmless, 65 C 76, 69 C 201, 90 C 382, 91 C 354

——and the whole record is to be consulted, 75 C 548

compelling plaintiff to cite in defendant where no actual harm results, 65 C 84

if main issues are correctly decided, irregularities or errors in reaching decision may be disregarded, 68 C 201, 86 C 579, 89 C 553

momentary possession of paper improperly by jury, 68 C 248

improper arguments of counsel, 68 C 551, 72 C 202, 252, 74 C 638, 700, 75 C 55, 215, 77 C 603, 81 C 22, 83 C 161, 183, 449, 466 642, 85 C 112, 86 C 100, 415, 92 C 658, 95 C 111, 96 C 160, 289, 582, 97 C 269

failure to indicate which of two rules of damages adopted where results would be substantially the same, 70 C 125

as regards receiver, judgment removing him is harmless, 70 C 473

error as to irrelevant findings, 70 C 473

conflict between language of findings and annexed exhibits; Supreme Court will follow exhibits, 71 C 254

ruling on accounting which results in appellant's favor, 71 C 503

giving the wrong reason for a right decision is harmless, 72 C 216, 74 C 125, 77 C 457, 79 C 104, 241, 605, 81 C 153, 84 C 275, 90 C 612, 94 C 80, 95 C 248, 281, 431, 107 C 119

refusing application to distribute estate where there is nothing to distribute, 72 C 322

striking out name of one plaintiff, 72 C 472

misjoining plaintiff where no judgment rendered for him, 72 C 519

rulings as to damages where defendant prevails, 73 C 300, 77 C 150

failure to sign bill of exceptions where issue otherwise raised, 73 C 384, 80 C 493

denying right to recover against one of two defendants where plaintiff recovers no damages, 74 C 443

error as to subordinate facts where conclusion is sound, 75 C 164

appointing temporary receiver of national bank, 76 C 260

in ruling as to failure of plaintiff's case where defense is fully proved, 77 C 22

rulings as to count on which appellant prevailed, 77 C 398
finding claims of party proved where other party fails to sustain burden upon him, 78 C 614
finding immaterial fact clearly by inadvertence, 79 C 276
plaintiff not harmed by grant of nonsuit as to one of two defendants, 79 C 379
as to election between counts, 79 C 672
finding fact where issue otherwise determined 80 C 310
failing to join defendant where decision reached not prejudicial to him, 80 C 460
valid judgment is not set aside because court gives insufficient reasons, 81 C 153
failing to mark paragraphs of draft finding "proven" where issues otherwise presented, 81 C 491
——or it would not avail appellant, 88 C 22
setting aside verdict without motion where it is later filed, 83 C 445
errors must be fundamental and substantial, 83 C 547, 85 C 55
——and prejudicial to appellant, 87 C 341, 91 C 316
when alleged errors that are unrelated to the main point in the case are harmless, 86 C 579
immaterial variance between pleading and proof harmless, 87 C 691
failure to permit examination of jurors in civil case, 89 C 46
ruling that statements are not libelous per se where cause of action otherwise defective, 89 C 553
striking case from jury list cannot be supported unless record shows error was harmless, 90 C 133
if trial court's action is correct, immaterial if it went on other grounds than urged by litigant, 90 C 612, 92 C 330
when harmless to consider facts court became acquainted with on former trial, 91 C 124
immaterial and harmless error of law not supported by facts, no grounds for reversal, 91 C 354
as to refusal to permit opponent to be present at taking of deposition, 91 C 405
immaterial whether plaintiff was in the exercise of due care if defendant not negligent, 91 C 551
finding fact, though not supported by evidence if harmless not ground for new trial, 92 C 208
setting aside verdict where, on bill of exceptions, charge appears erroneous, 92 C 252, 365
correctly directing verdict, but upon wrong theory, 92 C 330
irregularities in form of interrogatories which are consistent with verdict rendered, 93 C 446
finding fact not alleged, which does not enter into judgment, 93 C 545
ruling may be correct though reasons erroneous, 94 C 80
properly setting aside verdict, though on erroneous ground, not disturbed, 95 C 248
if judgment correct, reasons immaterial, 95 C 281
erroneous grounds for correct decision harmless, 95 C 431
not harmless to disregard statute requiring plaintiff's vehicle to carry light at night, where she sues for negligence of another in running into it, 95 C 603
conclusion as to waiver of right by plaintiff, where he never proved that right, 96 C 16
improper argument by state's attorney in criminal case may well be harmful, 96 C 164
requiring too high a standard of proof not harmless, 96 C 277
where upon conceded facts issue is determined against appellant as matter of law, it cannot complain as to rulings upon it, 96 C 588
if judgment on facts is sustainable upon any theory it stands, though court does not state its adoption of it, 96 C 644
rulings of law are immaterial, where court finds plaintiff's claims had no foundation in fact, 97 C 275
judgment directing sale in partition proceedings and payment into court harmless as regards owner of option on one co-tenant's interest, 97 C 518
finding notice of town meeting to have been given upon evidence other than recorded return harmless where town was defendant and could disprove it, if not true, 97 C 628
statement by compensation commissioner of his "impressions" harmless, as they must be disregarded, 98 C 286
inadvertent inclusion by court in its decision of an issue not seriously presented or essential where valid grounds for judgment appear, 99 C 307
failure to direct verdict harmless if jury render that verdict, 99 C 407
taking two verdicts in replevin with counterclaim; if verdict can be understood it should be sustained though informal, 100 C 100
where in suit on insurance policy with defense of award made, plaintiff fails in attack on award, errors as to mode of trial of other issues, 100 C 240
ruling as to priority of trial of legal and equitable issues, where it is obvious that plaintiff has no case, 100 C 249
directing decree in foreclosure of trust mortgage that debt be paid to assignee to whom plaintiff has assigned it to hold under trust, 101 C 667

that parties miscall a remedy will not defeat a lawful recovery, 102 C 645
ordering plaintiff to submit to physical examination where verdict is for defendant, 103 C 267
——so in such case errors in charge as to damages, 103 C 267
drawing of jurors, where accused not in fact prejudiced, 103 C 453
theatrical display by state's attorney indicating that accused was a peculiarly dangerous criminal, 103 C 454
technical disqualification of juror, 103 C 537
misconduct of juror unknown to him or prevailing parties, 103 C 546
assigning wrong ground for correctly setting aside verdict, 103 C 716, 105 C 774
where jury sent back for second or third consideration, clerk should be allowed to read verdict orally; but refusal to permit it is not reversible error, 105 C 528
where jury returns general verdict for defendant and there was no error as to one defense, error as to other does not matter, 105 C 641
trial court ordinarily must determine whether improper argument was harmful and its decision rarely overturned, 106 C 119, 108 C 191
irregularity in summoning jury not error unless prejudicial, 106 C 701
if verdict good as to either of two causes of action stated in complaint, error as to other nil sig., 107 C 197
obvious error in statement of conclusion where subordinate facts accord with allegations of complaint and support judgment, 108 C 58
in determining whether ruling harmless, court is limited to the facts found; cannot examine evidence, 108 C 205
question of court to party seeking to recover on contract of sale, including additional charges, whether he knew there was statute against usury, harmless, 109 C 117
treating three counts against accused separately, though he claimed there was only one offense, where judgment was suspended as to two, 109 C 573
if no cause of action is shown, nonsuit will be upheld, on whatever ground placed, 110 C 147
when plaintiff in action to quiet title fails to prove title in himself, he cannot complain of error as to defendant's title, 112 C 152
refusal to permit third party to intervene, not harmful to defendants, 114 C 231
where both negligence and wanton misconduct are alleged and there is general verdict, an error as to one cause of action will not avail appellant if there was no error as to other, 116 C 48
had trial court found that moving street line to conform to building line resulted in no decrease in value of property, conclusion of nominal damages might be justified, 116 C 402
——and assessment of nominal benefits would have been harmless error at worst, 116 C 402
rule that where there are two or more counts in a complaint and verdict is general, it will be sustained if there is no error as to one, only applies where damages recoverable under both would be the same, 117 C 206
——does not apply where one count is for alienation of affections and the other for criminal conversation, 117 C 206
where court made improper allowances for services of veterinarian but failed to include interest on value of horse that died, amounting to more than sum allowed, new trial not granted, 117 C 510
whether court was correct on ground on which it denied bill of particulars in criminal case not considered, since it should have been denied, 119 C 73
where court held defendant negligent for failure to provide adequate lighting for entrance and because entrance so poorly constructed as to be dangerous, especially at night when unlighted, second conclusion sufficient to sustain judgment without regard to correctness of first, 119 C 465
formerly where complaint stated two grounds of recovery, and there was general verdict with no interrogatories, if verdict could be sustained on either ground it was good, 120 C 415
——but rule now limited in cases where various grounds of negligence alleged; appellant may take advantage of errors on one specification only, 120 C 415
statement by court that certain inference suggested in question asked by attorney would not follow and that question was not a fair one, harmless, 120 C 623
that court directed verdict for defendant on ground that all issues were res adjudicata, harmless error, where one issue was not res adjudicata but had no evidence to support it, 121 C 26
general verdict, if good on either count, must stand, 121 C 205
improper argument based on evidence admitted for limited purpose where no motion for mistrial or to set verdict aside made and court charged that issues to which it was directed were not in case, *held* not reversible error, 121 C 316
while court's conclusions that plaintiff's only remedy was by foreclosure against property and that she was not entitled to declaratory judgment were erroneous, ruling was not reversible error as broad judgment for defendants afforded sufficient answer to plaintiff's claims, 122 C 407

conclusion that plaintiff assumed burden of proving agency by pleading it, harmless when facts were such it could not reach conclusion of agency, 123 C 460

where on facts found conclusion was correct, that court erred in placing burden of proof to show cause for action upon defendants does not invalidate judgment, 124 C 271

inadvertent failure to include plaintiff's exhibit in those going to jury room, offered by plaintiff for comparison of signatures, which was examined by jury, not harmful as regards defendant, 124 C 569

where there were two separate defenses, verdict for defendant was general and plaintiff did not request jury to state on which defense verdict was based nor request interrogatories, Supreme Court did not consider correctness of charge on one defense when there was no error in other, 125 C 77

where court was in error in refusing to decide certain questions, if appellant could not as matter of law prevail on essential issue, error would be harmless, 125 C 271

where had indictment been quashed state's attorney could have immediately filed information charging same offenses, quaere whether he could be held injured by any defect in proceedings of grand jury, 126 C 64

technical contention de matter which did not prejudice appellant, no ground for new trial, 126 C 82

where plea in abatement was properly sustained, it is of no consequence that court placed its decision on another ground, 126 C 653

placing correct action in setting aside verdict upon a wrong ground, 127 C 343

claims of error concerning computation of damages immaterial where plaintiff not entitled to recover, 127 C 705

court decided case upon record containing finding made on evidence although case should have been decided upon transcript of proceedings of commission introduced at trial, 128 C 114

where plaintiff failed to prove allegations which would justify relief upon either of two counts, ruling requiring him to elect upon which count he would proceed of no consequence, 129 C 14

court's finding that there was no mistake where question was not within issues, 129 C 23

§ 38(2). Rulings on Pleadings

disallowance of special plea no ground for new trial where every fact was in evidence under general issue, 10 C 291

defendant not harmed by surplusage in complaint if judgment is fully supported by remaining averments, 60 C 380

denying motion to strike out, where default later suffered, 64 C 487

ruling on demurrer of one party *held* not to avail another, 65 C 84

——so party cannot complain of any ruling as to which he has no interest, 84 C 208

striking out allegation where party not thereby prevented from putting in whole case, 69 C 201, 72 C 531, 76 C 148, 81 C 707, 84 C 501, 89 C 671

——refusing to allow amendment in such case, 82 C 479

overruling demurrer where only harm was to make proof more burdensome, 69 C 205

——or which goes to different basis of action than that claimed, 77 C 482

——or where defect is cured by amendment, 60 C 378, 73 C 187, 90 C 261

sustaining demurrer to one of two counts where plaintiff cannot recover on either, 69 C 484

——sustaining demurrer to complaint *held* harmless on assumption that, if overruled, defendant would have pleaded over and prevailed, 68 C 504

failure to specify grounds for sustaining demurrer, 69 C 489

——stating wrong ground for right result, 78 C 575, 79 C 241, 603, 84 C 275

sustaining demurrer to pleading afterwards replaced by another, 72 C 196, 257, 74 C 125, 80 C 348, 549, 81 C 474, 91 C 474

——though latter is filed under order of court, 81 C 415

denying motion to file defenses to count which court treats as out of the case, 72 C 651

refusing permission to replace plea with demurrer where latter would not avail, 74 C 38

striking out allegation where case turns on another issue, 74 C 498

rulings on demurrer where same question is presented and correctly decided on trial, 76 C 335, 77 C 304, 85 C 51, 86 C 616

——on technical grounds, where substantial rights upheld, 79 C 100

——where later proceedings disclose that no harm was done, 83 C 554, 87 C 342, 91 C 356

abating action where complaint is defective in substance, 76 C 628

where pleading insufficient on any ground, overruling it is harmless, 81 C 646

judgment on demurrer not reversed if correct, though on wrong ground, 82 C 353

in ruling on demurrer, question is correctness of result, not reasons assigned by trial court, 84 C 275

ruling on demurrer is unimportant if point is decided after hearing on all the evidence, 86 C 616

verbal inaccuracy in answer whereby certain issues not closed, 87 C 221
denial of motion for disclosure of facts not legally available harmless, 91 C 554
overruling demurrer to one of several defenses where all issues found for defendant, 92 C 293
sustaining demurrer addressed to each of several paragraphs on same grounds, where it should have been addressed to allegations as a whole, 93 C 393
if demurrer sustained rightly on some grounds, action de others immaterial, 93 C 614
ruling as to pleading where enough remains in case to present vital issue which is correctly decided, 98 C 256
overruling demurrer where same issue raised on trial, 99 C 69, 109 C 292, 114 C 679, 116 C 456
——particularly if decided for prevailing party, 99 C 70
expunging matter from complaint where on trial evidence as to it is freely admitted, 99 C 307
no appeal from action on original complaint where substituted complaint is filed, 99 C 388
right ruling on demurrer will be sustained on appeal though based on wrong ground, 102 C 126, 107 C 117
case will not be sent back to correct harmless erroneous ruling on point of pleading, 111 C 124
where fact the lack of which is ground of demurrer is proven on trial, overruling demurrer is harmless, 111 C 126
——this upon basis that result would be exactly the same on rehearing, 111 C 126
sustaining demurrer to special defense where defendant permitted to prove facts alleged on trial, 111 C 566
where ultimate result would be the same whether trial court was correct or not in sustaining demurrer, error is harmless, 114 C 737
possible error in ruling on demurrer cannot be of avail where necessary facts are proven on trial, 118 C 650
immaterial that court placed ruling on demurrer on grounds other than those found determinative, 119 C 689, 123 C 573
where granting motion for more specific statement did not prevent plaintiff from proving its cause of action or make its burden heavier, error would be harmless, 124 C 490
denial of motion to amend harmless error, where issue contained in it actually tried out, 126 C 644
appeal on ground of uncertainty in information not sustainable unless it appeared that defendants were prejudiced in defense on merits, 128 C 407
overruled demurrer to complaint not considered on appeal from judgment where court has all facts before it, 128 C 422
overruling demurrer to complaint no harm to defendant where there is subsequent trial on merits in which same issues involved, 129 C 386

§ 38(3). Rulings on Evidence

new trial not granted for admission of immaterial evidence, 1 C 522
not granted because evidence admissible for one purpose was wrongfully admitted for another, 9 C 398, 13 C 326, 20 C 509, 36 C 220
——though it does not appear on what ground it was received, 36 C 220
not granted for admission of improper evidence on a conceded point, 12 C 423
decree not erroneous for admission of improper testimony if unaffected by it, 15 C 205
evidence received subject to objection but not regarded, no ground of error, 24 C 619
improper evidence received, but not considered, *held* no error if justice is sought to be prevented by technicality, 26 C 309
admissible answer to inadmissible question, *held* no ground for new trial, 36 C 221
——so also inadmissible answer disclaimed by counsel, 36 C 221
new trial not always granted for admission of irrelevant evidence, 42 C 206
new trial not granted for rejection of evidence admitted on another ground, 46 C 64
it must clearly appear that improper rejection of evidence worked no harm, to be a ground of refusal of new trial, 48 C 24
——where objectionable evidence is claimed to be harmless because of an admission on the trial such admission must be co-extensive with the evidence claimed, 48 C 24
denial of right to prove one fact relevant to case is presumably injurious and error, 49 C 339
——it might be the beginning of a chain of important facts, 49 C 339
new trial not granted when losing party suffers no injury from irrelevant evidence, 51 C 273
reception of evidence admissible for any purpose furnishes no ground for new trial, 51 C 532
——rule applies only where it does not appear that it was received for an illegitimate purpose, 51 C 532
permitting plaintiff to introduce testimony over defendant's objection rendered harmless where defendant later introduced similar testimony, 52 C 285
error which did not influence judgment *held* immaterial, 52 C 310

mere failure to admit evidence in its proper order, no ground for new trial, 57 C 137
where evidence is inadmissible it is immaterial that court ruled it out on wrong principle, 58 C 442
reception of deposition which had been out of hands of clerk, contrary to statute, *held* no ground for new trial, where no harm done, 58 C 494
new trial will not be granted for exclusion of evidence which would be of no avail thereon, 59 C 115
unless it clearly appears that improper evidence did no harm, safer course is to grant new trial, 60 C 160
rejection of rebutting evidence on question of damages when merely nominal, *held* not a ground for new trial, 62 C 246
harmless if result would not have been changed, 62 C 542, 70 C 54, 72 C 232, 75 C 33, 127, 197, 83 C 407, 84 C 207
——or is clearly correct, 70 C 745
——or evidence does not touch vital issue in case, 81 C 622, 82 C 539
——or would not benefit appellant, 91 C 449
——or it goes to issue not in case, 82 C 653
——or to one which decision makes immaterial, 70 C 67, 80 C 338, 82 C 595, 83 C 386, 90 C 148
to justify new trial, record must disclose harm, 65 C 93, 78 C 629, 79 C 664, 80 C 452
——or a possibility of harm, 70 C 646, 78 C 396
overruling objection as to form of questions, or where evidence was trivial, or favorable to appellant, 66 C 193, 76 C 208, 77 C 399, 79 C 379, 87 C 341
excluding evidence later given, 66 C 250, 72 C 305, 74 C 257, 78 C 430, 83 C 216, 90 C 677
admitting evidence in rebuttal of irrelevant evidence, 67 C 533, 69 C 272
reception of evidence subject to objection may be ground for new trial unless it appears party not harmed, 68 C 55
admitting evidence as to construction of document where court adopts objector's claims, 68 C 579
admitting document in evidence during argument, 69 C 440
admitting hearsay statement of witness out of court where defendant confirms it in his testimony, 69 C 652
overruling objection where evidence elsewhere given without objection, 70 C 646, 71 C 437
admitting question where no answer given, 71 C 638
——or witness states he does not remember, 74 C 564
——or the answer makes question harmless, 81 C 22
admitting evidence as to matter which jury are instructed later to disregard, 73 C 187, 82 C 280, 647
rulings on evidence where facts are otherwise proved or admitted, 73 C 300, 77 C 165, 79 C 540, 80 C 338, 82 C 33, 552, 83 C 64, 84 C 169, 508, 654, 85 C 613, 88 C 109, 219, 547, 720, 89 C 321, 90 C 570
——or court takes judicial notice, 91 C 431
ruling admitting evidence where record fails to show that such evidence was in fact given, 73 C 589
admitting evidence where court finds against it, 75 C 139
——or wholly disregards it, 85 C 635
rulings as to relevancy or remoteness of evidence, 76 C 209, 302, 77 C 397, 617, 79 C 217, 664, 81 C 75, 573, 90 C 126
limiting scope of cross-examination, 77 C 462, 81 C 423, 83 C 537, 85 C 259, 91 C 449
in rulings on evidence, the possibility of affecting the result is the test, 78 C 396, 629, 83 C 547
——and in a criminal prosecution, the defendant is entitled to every doubt upon the question, 75 C 334
harmless error de evidence not ground for retrial, 79 C 665
ruling on burden of proof immaterial when, 80 C 452
excluding question preliminary only, 81 C 338
fact not necessarily undisputed because one witness testified to it and none against it, 81 C 359
if a question wrongfully excluded is answered later in answer to another question, such exclusion is harmless, 81 C 423, 82 C 33, 83 C 216
admission of immaterial evidence does not justify new trial, 81 C 573
if a fact is conceded it is harmless to exclude evidence of it, 82 C 33
reversal of order of evidence not harmful, 82 C 281
——admission of evidence on rebuttal instead of in chief is within the discretion of trial court, 82 C 281
conversation that is narrative of past event which is hearsay can be excluded, 82 C 334
if jury does not reach question of damages erroneous admission of evidence is harmless, 82 C 540
new trial not granted for ruling on evidence of slight importance or which is within the discretion of the trial court, 83 C 183
exclusion of a question afterwards answered is harmless, 83 C 216
evidence to support ownership claim of defendant which is not adjudicated is not harmful to plaintiff found to have no title, 83 C 386
erroneous admission of oral evidence harmless if trial court decision is the same as

that demanded by written instrument, 83 C 407

Supreme Court cannot assume that evidence which is rebuttal is prejudicial to defendant because the introduction is permitted during plaintiff's case in chief, 83 C 417

answer to question that is relevant should stand though not responsive, 84 C 170

excluding opinion of nonexpert who has testified to facts, 84 C 202

ruling as to preliminary proof of document offered on direct examination made harmless by facts brought out on cross-examination, 85 C 18

excluding evidence where inference from it would be remote and unsubstantial, 85 C 66

——or it would be material only in connection with other facts not proved, 65 C 69, 88 C 219

exclusion of ambiguous question on matter already passed on, harmless, 85 C 255

evidence received but not later connected so as to make it relevant not considered unless it appears of record, 85 C 360

witness expressing himself on a matter calling for conclusion of the court harmless, 85 C 384

where one has testified that he made a payment and this is uncontradicted new trial not granted even if a receipt was improperly admitted in evidence, 85 C 613

new trial not granted for illegal admission of evidence if trial court disregarded it absolutely, 85 C 635

if jury fully instructed, no harm in erroneous admission of evidence, 86 C 302

immaterial self-serving declaration, 86 C 346

use of word "sold" where all facts as to transaction claimed to be a sale later shown, 86 C 474

exclusion of written declarations of decedent is not harmless, though oral ones are offered, 86 C 475

evidence harmless that does not relate to vital facts of case, 86 C 579

technical error where no injustice appears is harmless, 87 C 349

exclusion is harmless if court finds the facts the evidence would prove, 88 C 109

question on cross-examination of accused tending to reflect on his character, not in issue, is not harmless, though his answer was "no," 88 C 150

harmless to exclude evidence that would not avail or which proves facts admitted, 88 C 220

no error in exclusion of evidence if it might have been admitted for another purpose not claimed, 88 C 548

evidence received on distribution of real estate was under circumstances harmless, 88 C 683

exclusion of direct evidence of party is not harmless, though opponent later puts in deposition given by him, 89 C 205

evidence may be so immaterial that its admission is harmless, 90 C 148

harmless to exclude question de contents of paper containing results of interview if interview is later testified to, 90 C 677

court must assume admission of evidence as to special damages not pleaded was harmful, 91 C 339

excluding evidence on issue which decision makes immaterial is harmless, 91 C 431

harmless to exclude evidence of meaning of words court takes judicial notice of, 91 C 431

admitting improper evidence where facts later established by proper evidence, 91 C 432, 92 C 658

exclusion of evidence of no benefit to party offering it, not harmful, 91 C 449

excluding evidence as to immaterial fact, 92 C 428

admission of questionable evidence, on undisputed fact, is harmless, 92 C 658

erroneous ruling on evidence that is discretionary, harmless, 92 C 576

relaxing rules in examining witness with scanty knowledge of English not reversible error, 93 C 107

admitting evidence as to testator's intent in use of word, where it accords with legal construction, 93 C 308

error as to burden of proof where only question is one of law on undisputed facts, 94 C 452

admitting hearsay, where another witness had given same testimony without objection and adverse party had qualifiedly admitted the fact, 95 C 62

excluding evidence of nonexperts as to danger of maintaining rugs on slippery floor of hotel lobby, where jury themselves visited premises, 95 C 231

if result would have been the same with an opposite ruling, errors are harmless, 95 C 263

harmless error in excluding leading questions, 95 C 521

excluding on cross-examination of plaintiff question why he had never brought suit on a certain note, where he fully detailed all the circumstances of the transaction, 95 C 566

admitting preliminary questions to elicit opinion of medical expert is harmless where evidence itself was excluded, 96 C 240

excluding certain questions in cross-examination of medical expert in view of otherwise wide latitude permitted in examination, as exclusion did the accused no harm, 96 C 240

harmful error will not be predicated upon answer irrelevant and irresponsive but respecting trivial matter, 96 C 582

excluding cross-examination of photographer as to other pictures taken by him, where they were available to party examining, 96 C 590
where improper question is not answered and is withdrawn, or witness says he does not know, 96 C 638
improperly admitting testimony as to fact otherwise amply proved, 97 C 155
where evidence highly prejudicial to defendand and not relevant to charge was admitted and subsequently excluded, harmful error, 97 C 258
exclusion of leading questions where party makes no attempt to replace them with proper ones, 97 C 298
admitting questions where witness answers he does not know or does not remember, 97 C 298
excluding question of witness in cross-examination as to whether he would produce document in his possession, 97 C 515
excluding question of plaintiff as to another suit in another State as affecting credit, 97 C 656
excluding testimony for remoteness where point was later covered by direct evidence, 98 C 165
admitting evidence where it is apparent that no injury to complaining party and no injustice was done, 99 C 158
erroneous admission of birth certificate *held* not harmless though person testified himself as to his age, 99 C 278
immaterial bit of hearsay to which no attention was paid till motion to strike out some time later, 100 C 64
improper admission of evidence to prove feature of controversy not really in dispute, 100 C 217
in action to recover money lost in gaming, admission of evidence as to previous wagers harmless, 100 C 550
——so admitting question where witness answers he does not know, 100 C 550
if answer of witness does not appear in finding, ruling admitting question not deemed harmful, 100 C 680
exclusion of admissible evidence, where substantially introduced in another manner, 102 C 162
exclusion of unimportant evidence, 102 C 162, 331
where objection is that evidence is immaterial and irrelevant admission not often harmful, 102 C 187
withdrawal of exhibit marked for identification on failure to connect it with accused, with caution by court, 103 C 456
cross-examination as to subsequent repairs to defective highway harmless in view of other evidence, 103 C 598
erroneous ruling on evidence not reversible error, if harmless, 104 C 318, 105 C 392, 106 C 86, 127, 286
must appear from finding that answer to question objected to was responsive or harmful, 104 C 366
admission of evidence of general custom where local custom is controlling, 105 C 34
admission of incompetent evidence to prove loss of public record where subsequent direct evidence produced, 105 C 429
erroneous admission of evidence is harmless, where finding shows it had no effect on judgment, 105 C 625, 710
erroneous ruling on evidence not reversible error unless material to conclusion, 105 C 710
if erroneous evidence of damage could not substantially affect amount of verdict, it will not be set aside, 106 C 127
admitting statement by agent that he had reported matter to principal, where law would presume that he had done so, 106 C 128
action of trial court in reversing its rulings on evidence *held* not to have confused the jury, 106 C 677
rulings upon evidence admitting leading questions *held* inconsequential and in discretion of trial court, 106 C 728
reading caption to statement of victim of abortion made in presence of accused where it adds nothing to statement, 107 C 148
admitting evidence as to issue removed from case by charge, 107 C 205
admitting opinion as to self-evident fact, 107 C 205
rulings on evidence which could not have affected result, 107 C 536
excluding evidence on issue found for objecting party, 107 C 544
to permit mother to testify that she had asked daughter as to what "arrangement" she had made with accused to visit office of another doctor where making of some arrangement was admitted, 108 C 53
improper voluntary statement made by witness in criminal prosecution tending to implicate accused, immediately stricken out, not ground of error, 108 C 57
in admitting testimony as to one of several fraudulent representations alleged to have been made to secure license to practice medicine, 108 C 80
exclusion of certain testimony on issue where neither by itself nor in connection with other evidence would it afford reasonable basis for judgment for appellant, 108 C 178
in determining whether harmless, facts found, not evidence attached to motion to correct, to be considered, 108 C 205
excluding declaration of deceased person as to fact not disputed, 109 C 223

exclusion harmless where fact in effect already testified to, 109 C 292

——so where, under unchallenged finding, court had found fact to be otherwise, 109 C 292

——so where fact was in itself immaterial, 109 C 292

where witness answers question objected to, that he did not remember, 109 C 408

exclusion of cumulative evidence harmless and within court's discretion, 110 C 49

improper statements of witness objected to and followed by instruction to jury to disregard them *held* insufficient ground for new trial, in long criminal trial, 110 C 55

admitting schedules in bankruptcy to prove liabilities of bankrupt where other evidence showed greater liabilities, 110 C 129

where court had already ruled against appellant on evidence, submitting issue of relevancy to jury, harmless, 110 C 221

admitting in evidence articles found on person of accused after crime committed and not relevant to it is harmful where they were likely to cause prejudice, 110 C 403

exclusion of evidence where record does not show it would have been material, 111 C 306

admitting testimony on previous trial to contradict witness when it is not in proper form, if it could not have worked appreciable harm, 111 C 503

admitting hypothetical question based upon wrong theory where court ultimately rejected theory, 112 C 496

improper cross-examination relevant to damages only, harmless where jury found for defendant, 113 C 364

testimony of deceased's statements directly after accident admitted and later stricken out, 113 C 457

charge to disregard evidence improperly admitted as making admission harmless, 113 C 465

exclusion of question of defendant whether he had fraudulent intent in making conveyance, harmless where he fully testified as to circumstances of conveyance and purpose in making it, 114 C 231

——particularly as refusal of court to find facts he claimed shows a disbelief in truth of his testimony, 114 C 231

where witness answered that she did not remember, that questions improper, nil sig., 114 C 546

where letters which merely afforded cumulative evidence were excluded, error harmless, 114 C 567

error in admission of evidence of custom to make road test after repair of car harmless, where mechanic invited owner to make test, in suit under guest statute, 115 C 546

rulings as to damages where verdict finds issue of liability for defendant, 115 C 714

ruling excluding matters as not proper cross-examination harmless, where they were later given in evidence by witness when called as other party's witness, 116 C 549

if answers had been admitted as available as substantive evidence, when they should have been only to test credibility, this could not be held harmful where reply to one did not appear of record, and that to second was in negative, 116 C 593

where remonstrance was on ground that findings not supported by evidence and appeal is taken from overruling it, immaterial whether trial court used evidence not properly to be considered as question is same before trial court and on appeal, 117 C 75

admission of original answer denying allegation afterward admitted by substituted answer; no effect on verdict, particularly in view of court's charge, 117 C 547

exclusion of plaintiff's accident report on ground that it contained nothing not already testified to by him, not harmful, 117 C 548

exclusion of question on cross-examination of whether plaintiff knew operator had driven recklessly on former occasions not reversible error where defendant did not claim to have proved absence of slight care required of plaintiff, 117 C 612

exclusion of specific questions as to statements made by plaintiff to driver of car harmless where both had testified that she said nothing to him, 117 C 612

that other facts are properly proven in support of conclusion of court, does not make harmless admission of improper evidence relevant to that conclusion, 117 C 654

any errors in rulings on issue of employment or damages, not of consequence when verdict was for defendants in suit against driver of car and his employer, 117 C 698

exclusion of evidence claimed to be pertinent to the amount of damages of no moment where judgment was for defendant, 118 C 166

where no motion to strike out and no ruling made on any specific question, ruling of referee excluding further examination along certain line not reversible error, 118 C 332

erroneous ruling not ground for reversal unless of such nature as would affect verdict, 118 C 444

——admission of book offered as writing made in regular course of business not harmful where it added little to evidence already in, 118 C 444

cross-examination by plaintiff of investigator if it were not true that none of witnesses interviewed except plaintiff mentioned banana peel on step not harmful, where these

witnesses later testified to this effect without objection, 118 C 527
refusal of court to permit claim adjuster to testify further as to efforts made to locate defendant, out of jurisdiction, harmless, 118 C 531
ruling harmless where it becomes academic because of subsequent developments, 118 C 687
valuation of property for taxation; exclusion of evidence of agreed reduction of rent after taxing date erroneous but harmless in view of figures arrived at, 119 C 5
admission of evidence of insurance carried harmless, as value found was less than this amount, 119 C 13
erroneous admission of deed to defendant without proper proof harmless in quiet title action where plaintiff did not prove his own title, 119 C 282
where court erroneously refused to admit testimony of attorney who was trying case on motion for new trial, error was harmless where motion should have been denied anyway, 120 C 367
exclusion of question harmless where same question is later answered, 121 C 133, 122 C 610
evidence showing members of board had actual knowledge if inadmissible was harmless, since knowledge was imputed to them, 121 C 163
admission of mortgage, execution and contents of which were not in dispute, if erroneous was not reversible error, 122 C 229
where court failed to find that defendant did not push plaintiff against mantel, exclusion of her testimony as to effect she claimed to have been caused harmless, 123 C 218
admission of evidence as to use of way from 1913 to 1916 to establish prescription harmless where more than prescriptive period elapsed thereafter, 124 C 42
where verdict for defendant, correctness of admission of evidence bearing on damages immaterial, 125 C 103
new trial not granted for improper admission of evidence where it is apparent that no injury to complainant could have resulted, 125 C 209
where it does not appear that question was answered, ruling admitting it is harmless, 125 C 210, 264
where difference between testimony of witness as to speed, though improperly admitted, and testimony of other witnesses would not be material factor affecting conclusion, admission would be harmless, 125 C 368
harmless error to admit question as to conversation where answer was that party with whom it was claimed to have been held was not present, 125 C 580
——whether or not question was proper examination of no consequence if, so far as appears, answer was harmless, 125 C 580
exclusion of evidence to prove matter not only undisputed but expressly admitted is harmless, 125 C 713
rape case; question by State of defendant whether complainant was decent girl not harmful in view of answer, 125 C 733
where documents in evidence are irrelevant to charge against one of several defendants in criminal prosecution, their admission is harmless as to him, 126 C 8
where appellant's cross-examination went to credibility of witness, he was not harmed by its exclusion where he admitted essential elements of transaction to which witness testified, 126 C 82
admission of testimony as to authority of plaintiff's agents in making lease, harmless where their acts were ratified by bringing suit, 126 C 311
exclusion of testimony supporting fact found by court not basis of error, 126 C 369
exclusion of expert testimony, corroborative of fact substantially undisputed, would not be reversible error, 126 C 620
evidence of lighting engineer that light in aisle of moving picture theater was "inadequate" harmless, where it was already established that there was no light, 127 C 373
although court erroneously admitted evidence of understanding that provision in written agreement should not be operative, this was harmless where there could be no recovery from contract as it stood, 128 C 148
though trial court wrong in effect it gave to statutory presumption de contributory negligence in death case, its error of no consequence as there was enough evidence to support verdict, 129 C 386

§ 39. ——Error Waived

party should never assgin as error that which he might have pleaded in abatement; omission to take this remedy is waiver, 5 C 544
new trial not granted for reception of proof demanded by party seeking, 31 C 577
objection that evidence inadmissible under pleadings waived by failure to make it below, 34 C 538
right to new trial not lost by abandonment at trial of claim under which evidence was excluded, 44 C 486
irregularity of appeal, 66 C 37
plea in bar or admission in answer waives such defects as are reached by motion, 66 C 165, 70 C 73, 320, 73 C 83, 368, 74 C 304, 75 C 254, 77 C 382, 602, 78 C 119
defects in process waived by general appearance, 67 C 366, 77 C 382

——general appearance in Supreme Court not in itself a waiver of defect of process, 70 C 329
party claiming judgment against all defendants cannot complain of failure to give it against one only, 68 C 496
failure to ask court to limit effect of admission, 69 C 5
——to object to statement of issues by judge in place of reading pleadings to jury, 91 C 430
by trial and consent to reservation, party is estopped to claim that issues tried were not those settled before trial, 69 C 228
——so, to claim error as to pleadings after stipulation filed and judgment entered accordingly, 67 C 73
failure to make formal denial waived by trial, 70 C 420
failing to object to irregularity of probate appeal on reservation waives it, 71 C 129
pleading over after demurrer overruled does not waive error as to it, 71 C 190, 74 C 689
formal defects in complaint waived by plea in bar and trial, 71 C 613, 72 C 450, 73 C 368, 74 C 304, 75 C 423, 77 C 155, 358, 79 C 255, 338, 449, 82 C 567, 91 C 1
——or by judgment in default, 73 C 428, 75 C 79, 77 C 358, 78 C 48
——or by such judgment and hearing in damages, 72 C 617, 73 C 182, 77 C 501, 78 C 48
to recognize that judgment is necessary result of certain ruling does not make it judgment by consent; and consent to filing amendment does not waive defects in it, 72 C 257
irregularity in signing writ of scire facias waived by pleading to it, 74 C 87
defect as to jurisdiction over the subject matter not waived by trial, 74 C 265, 85 C 528, 89 C 196
——nor is disqualification of judge, 75 C 104
nonjoinder of husband in action by wife waived by going to trial without objection, 75 C 279
argument on merits in Supreme Court as waiving defect of parties, 75 C 605
executor who entered to defend cannot complain of a judgment against "the defendant," 77 C 382
amending pleading waives right to claim error in rulings on original, 79 C 79, 80 C 549, 81 C 415, 474
amendable defects in criminal information not properly attacked, disregarded, 80 C 614
failure to object to giving interrogatories to jury, 81 C 611
——to acceptance of unsigned verdict, 81 C 656
——to variance, 83 C 634
——to determination of substantial rights on motion addressed to pleading, 77 C 284
——to demurrer being too general, 73 C 538
——to evidence that act was done by agent, not pleaded, 66 C 155
——to treating original file of justice court as record, 77 C 140
——to improper argument, 81 C 22, 83 C 161, 183, 86 C 415
title as it appears in complaint and is admitted by answer is taken to be true, 83 C 204
errors apparent on record but not presented, disregarded, 83 C 510
——so reasons of appeal not urged, 83 C 417, 92 C 579, 94 C 521, 95 C 378, 97 C 308
ruling sustaining demurrer to special defense not waived by trial on general issue, 83 C 634
want of notice of appeal to railroad commissioners waived by appearance and hearing, 84 C 24
if party has assumed burden of proof his burden so regarded on appeal, 85 C 148
finding destroying grounds of injunction sought, prevents plaintiff from raising such questions, 87 C 183
appellant who has alleged a fact he need not have done, cannot complain that the burden was on him to prove it, 88 C 114
inspection and approval of judgment file as waiving defects, 88 C 676
objection to evidence waived by later admitting fact, 89 C 322
having admitted in answer due incorporation, it cannot be denied on appeal, 89 C 616
error as to motion for disclosure later replaced by another, 90 C 261
answering over after overruling plea to jurisdiction not waiver of errors as to it, 90 C 293
variance must be claimed on trial or it is waived, 91 C 251
——so misconduct of juror must be called to attention of court, 92 C 155
failure to pursue assignments of error waives them, 92 C 579
if no objection made to generality of complaint in evidence offered under it, court will not listen to claim of variance, 93 C 302
one contesting case on merits only cannot complain of material variance, 93 C 302
court will not regard errors not assigned or urged in argument, particularly if substantial justice was done, 93 C 691
appellant cannot complain if he did not ask for more specific statement of damages and makes no objection to evidence, 94 C 481
where evidence is excluded because question is leading, this rarely ground of error, as information might ordinarily be secured by proper question, 95 C 520

where objection is made at once to improper argument and court says it will cover matter in charge, there is no waiver of rights of objector, 96 C 289

——but objection made only after verdict comes too late, 96 C 584

claim of variance not made on trial deemed to have been waived, 98 C 577

by pleading over after demurrer overruled, one does not waive right to appeal, 99 C 67

error cannot be claimed in ruling on pleading voluntarily replaced by another, 99 C 67, 388

waiver of absence of innuendo in complaint for slander by going to trial, 99 C 717

appellee waives adverse rulings unless he files bill of exception, 101 C 579

objection to form of counterclaim waived unless raised on trial, 102 C 152

accused waives defects in drawing of jury panel by subsequent election of court trial, 105 C 326

defect as to jurisdiction over subject matter not waived by trial, 105 C 511

defendant who files new answer to amended complaint cannot raise questions as to motion to expunge parts of original answer to original complaint, 105 C 671

failure at continued hearing to proceed with cross-examination of plaintiff, interrupted on first hearing, as waiving right to it, 107 C 383

basing judgment on facts not within issues is not waived by failure to demur or object to evidence, 107 C 484

——but where facts were within general allegations of divorce complaint, but not in specific statement, admission of evidence as to them not error in absence of objection, 107 C 484

——too general a statement of cause of action waived by going to trial without objection, 107 C 484

claim of variance waived by contesting case on merits, 108 C 40

question of venue waived by failure to raise it, but not question of jurisdiction, 108 C 74

waiver of right to claim construction of contract by not making it at trial, 108 C 126

claimed construction of contract waived by contrary allegation in pleading, 108 C 126

failure to plead specially may be waived by failure to object, 108 C 469

governmental immunity by city under general denial; if litigated without objection from plaintiff he cannot on appeal claim it was not properly raised, 108 C 622

failure to object to evidence on ground pleadings do not set up family-car doctrine waives question, 109 C 417

variance between amount proved as selling price of property and amount alleged waived, if no objection made to evidence and defendant not prejudiced, 109 C 589

where court did not rule on admission of evidence of regulation of public utilities commission but reserved right to comment on it in charge, acquiescence in ruling as waiving right to object after verdict, 113 C 414

where complaint contained allegations justifying bringing action within one year after failure of previous action and demurrer to these allegations was sustained, failure to plead to answer to cause of action thereafter filed does not waive right to appeal from demurrer, 116 C 31

during direct examination of defendant, her counsel asked for conference with judge, and in chambers said he was surprised with testimony and asked if he could cross-examine her, to which plaintiff's counsel acceded; *held* latter could not claim any error, 116 C 672

where court charged in accordance with the request of party, he cannot, after verdict rendered, raise objection upon ground that complaint did not afford basis for recovery, 117 C 165

failure to object to use of photograph, offered for limited purpose, for other purposes, waives claims of error as to latter uses, 118 C 290

where, in action for accounting, court went into items of account and case was tried as one of assumpsit upon open account, error in not merely ordering accounting not ground of reversal, 120 C 184

where case tried on merits without claim of variance, it is waived, 120 C 230

party cannot on appeal claim as error defects of procedure which he expressly waived at trial, 125 C 737

by participating in accounting which included issues not within pleadings, party waives right to object to scope of accounting on appeal, 128 C 121

§ 40. ——Error Cured

new trial denied in quo warranto if term of offices expire pending argument, though there be error, 5 D 335

no ground for new trial where evidence erroneously excluded was subsequently admitted, 57 C 138

errors *held* to have been obviated by amendments and not to have prejudiced appellant, 60 C 378

error cured by verdict, 68 C 517, 70 C 72, 72 C 112, 75 C 201, 81 C 696, 84 C 272

——so improper argument, 81 C 22, 86 C 415

amendment curing defect will cause demurrer on that ground to be overruled, 71 C 632

error in ruling on demurrer may be cured by subsequent proceedings, 74 C 689, 83 C 554, 634, 87 C 341

——so ruling on plea in abatement, 76 C 414

——so error in admitting document may be cured by facts subsequently proved, 85 C 18

error in admitting evidence, when cured by charge, 80 C 532, 85 C 337, 359, 86 C 301, 87 C 173, 88 C 177

trial judge's error if jury's result is correct is immaterial, 81 C 310, 92 C 658, 93 C 241, 98 C 314, 99 C 405

if a question wrongfully excluded is answered later in answer to another question, such exclusion harmless, 81 C 423, 82 C 33, 83 C 216

leaving paper in file given to jury improperly, cured by charge, 82 C 59

failure to recite notice of injury cured by admitting due notice, 85 C 221

error in admission of evidence cured by instructions, 85 C 337, 360

error in failing to charge as requested cured by verdict negativing facts on which it is based, 86 C 263

admission of testimony corrected by the charge, 87 C 165

refusal to allow proper amendment disregarded where facts are stated in answer, 87 C 634

verdict for defendant cures errors in charge de damages, 91 C 581

defective allegations of pleading cured by verdict, 93 C 643, 97 C 149

reference in argument to defending insurance company cured by charge, 95 C 111

confusing instructions in charge cured by final instructions, 95 C 389

error in admitting evidence cured by charge and court's reversing itself, 95 C 500

court may of its own motion direct evidence to be stricken out, and, if it properly instructs jury to disregard it, error in admission is cured, 95 C 501

admitting evidence on issue of defendant's negligence of reputation as careful driver not cured by instruction to jury that it was immaterial, if they found him negligent, 95 C 639

where plaintiff illustrated personal injury without being sworn, error is cured where demonstration was repeated under oath, 96 C 34

ordinarily subsequent exclusion of inadmissible evidence will cure error, 97 C 259

——but not so, where testimony in effect charged accused with being notorious criminal, 97 C 259

error in charge as to one of two causes of action cured by general verdict for plaintiff, 98 C 52, 305, 653

party not aggrieved by adverse ruling on demurrer where he pleads over and final judgment is in his favor, 99 C 56

improper conduct of counsel during argument, in view of court warnings to them and its charge, 100 C 695

verdict in criminal case as curing untechnical allegations of information, 101 C 8

charge upon subject of plaintiff's damages not open to review, where verdict was for defendant, 101 C 603, 103 C 267

erroneous instruction de supervening negligence cured by defendant's verdict, 102 C 676

erroneous instruction that plaintiff must prove all acts of negligence alleged, cured by charge as a whole, 102 C 735

disqualification of juror when healed by verdict, 103 C 537

leaving construction of contract to jury where verdict eliminates issue, 104 C 24

general verdict on two counts is good if justified on one count, though error committed in charge on other count, 105 C 482

general verdict for defendant imports all issues found in his favor; error on only one, immaterial, 106 C 153

charge as to damage where defendant's judgment is upheld, 107 C 438, 115 C 713

placing burden to prove alibi on accused, where error was immediately corrected, 108 C 53

erroneous instruction cured by later statement that it is not applicable, 108 C 115

verdict may render harmless charge upon subjects which have no place in the case, 108 C 126

error in admitting evidence under original pleadings obviated by amendment relating back to beginning of action, 109 C 521

overruling demurrer based on lack of allegation of certain fact, becomes academic when on trial that fact is found, 112 C 646

failure to refer to contributory negligence in stating issues to be decided where later full charge given as to it, 115 C 715

erroneous charge corrected by later one given on recall of jury for that purpose, 116 C 102

error in charge cured by verdict, 116 C 389

proof of fact that plaintiff was using veranda for proper purpose when she fell, obviated any possible error in overruling demurrer, 116 C 454

where veridct accorded with legal result of undisputed facts appellant not in position to claim error in submitting issue to jury, 119 C 450

any possible error in overruling demurrer to defense, cured by case tried on issue and jury correctly charged, 123 C 661

any potential error in sustaining demurrer to defense de interest payment exceeding 3 per cent a month, obviated by subsequent trial and determination of issue on merits, 124 C 346

when error in charge cured by general verdict, 126 C 162
ruling excluding question of defendant de how much money he was getting from accident policy, of no consequence in view of verdict for plaintiff on counterclaim, 126 C 320
where plaintiff claimed by virtue of negligence and nuisance, general verdict for defendant did not cure error in charge on issue of nuisance, 126 C 446

§ 41. ——Favorable to Appellant
error favorable to the appellant will not be regarded, 73 C 377
charge favoring appellant, 82 C 199, 83 C 160, 90 C 59, 91 C 188, 316, 92 C 315, 93 C 126, 97 C 666, 104 C 83, 111 C 322
defendant cannot complain of charge that puts greater restrictions on plaintiff's recovery than do his own requests, 82 C 647
if plaintiff was entitled to recover, he cannot complain of judgment in his favor, 93 C 204
judgment for plaintiff, where, on his appeal, court finds it should have been for defendant, 93 C 210
defendant cannot complain of inadequacy of plaintiff's verdict, 98 C 507, 105 C 366, 410
——nor where damages found by court less than required by correct rule, 103 C 392
——nor of omission of jury to include interest in plaintiff's verdict, 104 C 703
losing party cannot complain of charge beneficial to him, 103 C 267
defendant cannot complain of instructions which tend to lessen his responsibility, 104 C 54, 674, 106 C 551
defendant cannot complain of omission to charge as to elements increasing his liability, 105 C 528
appellant could not complain of charge more favorable to him than his request, 117 C 607
charge leaving to jury which of two defendants was liable, too favorable to defendant when both were jointly and severally liable, 119 C 450
omission to charge de exception under Statute of Frauds prejudicial, if at all, to appellee, 121 C 397
where doctrine of last clear chance was not applicable, to give any instruction about it was too favorable to plaintiff, and she cannot complain if charge was too narrow in stating conditions for application of doctrine, 123 C 205
charge that two defendants would be liable to plaintiff for nuisance on same basis not ground of reversal where on facts neither would be liable for nuisance; too favorable to plaintiff, 125 C 526
colloquy between court and counsel as to basis of recovery which did not hamper plaintiff in offering testimony and was more favorable to plaintiff than otherwise, *held* not error, 125 C 670
plaintiff in no position to take advantage on appeal of court's excess of zeal in exhorting jury to return verdict for plaintiff, 126 C 489
where plaintiff made no complaint that judgment was too small, it must stand, 126 C 555

§ 42. ——Induced by Appellant
new trial not granted for misdirection requested by losing party, 12 C 227, 13 C 141
losing party has no ground for complaint where trial court complied with request, 60 C 61
if party consents to admission of evidence he cannot complain, 65 C 69
——or to use of document otherwise inadmissible, 90 C 669
——nor can he raise other questions where he agrees to a finding, 71 C 505
——nor can he complain of decision on demurrer to which he consents, 72 C 435
——or of ruling consented to, 79 C 79
error induced by appellant no ground for new trial, 66 C 577, 73 C 379
exclusion of evidence on appellant's objection, 67 C 64
where court adopts theory and requests of appellant, he cannot complain, 69 C 228, 76 C 283, 80 C 582, 83 C 278
——nor can he, as to taxing costs on count inserted by him out of court's jurisdiction, 79 C 305
where receiver sought finding which he claims damaged his business reputation, he cannot make it reason for reversal of judgment, 70 C 480
appellant cannot profit by an error into which he led the trial court, 73 C 377
party securing process can rarely object to it as invalid, 77 C 183
party can rarely complain of failure of opponent to introduce evidence, induced by his silence, 77 C 674
——or of charge which imposes greater restrictions on opponent than his own requests, 82 C 647
——or of the admission of evidence in pursuance of his own theory, 84 C 508
——or of failure to charge due to his own admissions or failure to make claim, 79 C 706
appellant cannot complain if court correctly applied law which he invoked, 83 C 278
if parties agree to admit paper which stated it should not be used as evidence, cannot later complain thereof, 90 C 669
where court at appellant's request charges that plaintiff's negligence in any degree will prevent his recovering in action, he cannot complain, 96 C 41

where matter provable under denial is also specially pleaded in defense, defendant cannot complain of charge putting burden on him, 97 C 509
charge in form requested, 98 C 522
party cannot complain of cross-examination upon subject which he introduced on direct, 103 C 598
party cannot complain of reference in charge to original allegations of amended complaint, where he based cross-examination on them, 104 C 297
trial court is justified in submitting case to jury upon basis of claims made by the parties, 105 C 57
appellant cannot complain that trial court adopted his theory of the case, 106 C 153
appellant cannot complain of construction of contract which accords with his own interpretation, 106 C 460
appellant cannot complain that judgment not supported by pleadings where he has procured it, 110 C 208
——stipulation for judgment giving relief to defendant where he did not ask it in pleadings, 110 C 208
appellant cannot claim that complaint did not afford basis of recovery where the court gave instruction in accordance with his own requests specifically based upon issues under it, 117 C 169

§ 43. ——Trivial Error

new trial not granted to enable recovery of nominal damages, 29 C 123, 39 C 306, 42 C 260, 49 C 66, 55 C 102, 56 C 558, 60 C 368, 482
——but small and nominal damages do not mean the same thing, 60 C 368
——where a real legal right is involved small damages are still substantial, 60 C 369
——so also where the question is the entire right of recovery, 63 C 374
where damages were $66 motion for new trial on ground that they were excessive denied as amount is too trivial to warrant renewal of controversy, 30 C 26
slight difference between demand and verdict is no ground for new trial, 32 C 508
new trial not granted to enable recovery of bill of costs merely, 46 C 135, 55 C 251
new trial not granted after hearing on merits in trover, because demand is made on the wrong person, 46 C 135
error in charge; damages small; new trial refused, 49 C 66
smallness of damages is not a ground for refusal of new trial where judgment is erroneous, 53 C 50
——so where damages were given on strength of inadmissible evidence, 53 C 50
principle of de minimis, *held* a ground of refusal, 56 C 558
where defendant demanded damages on counterclaim, a verdict of $1 for plaintiff, *held* not a ground for refusing new trial on an erroneous charge, 58 C 74
error involving very small sum immaterial, 76 C 153
new trial should not be sought where only small amount involved, 79 C 104, 88 C 50
trivial error in damages, 79 C 343, 86 C 265, 90 C 317
trifling or microscopical errors disregarded, 81 C 218
charge increasing damage by small amount, 83 C 208
items of insignificant amount ignored in finding and reasons of appeal disregarded, 85 C 629
de minimis non curat lex, 88 C 50
new trial not granted because of $6 error in a $1000 judgment, 88 C 50
if measure of damages is erroneous but matter involved small, no new trial, 90 C 317
no error if an item of $4 only is involved, 94 C 256
failure to include interest amounting to $3 or less too trivial error to be regarded, 96 C 645
failure of court in ordering remittitur to include element amounting to $1, 96 C 685
ordinarily, plaintiff not entitled to new trial for nominal damages, 106 C 167
error amounting at most to $21 too trivial to justify new trial, 107 C 532
unless substantial rights involved, new trial not ordered for nominal damages, 108 C 97, 109 C 452, 117 C 257
expense and time required on new trial as ground to deny it where damages are small, 110 C 536
——as where $80.14 arrived at after long trial of accounting, 110 C 536
——cases where new trial denied because amount involved trivial sum reviewed, 110 C 538
if sole error was in failure to allow defendant $15, this too small to justify new trial, 110 C 658
where plaintiff secured verdict of $75 against driver of automobile but jury found issues for alleged employer, appeal not denied because of small sum involved, 114 C 707
new trial not ordinarily granted to enable plaintiff to recover merely nominal damages, particularly if substantial justice has been done, 117 C 257
failure to give nominal damages in tort action where costs cannot exceed them, not sufficient ground for new trial, 119 C 492
trivial wrongful assumption of fact in charge will not be treated as reversible error, 121 C 335
error in awarding $1 damages too inconsequential to justify remand, 129 C 576

§ 44. Practice and Procedure in Supreme Court

§ 45. ——Miscellaneous Rulings and Customs

after verdict it will be presumed that the facts necessary to support same were proved, 5 D 327

will not draw inferences from agreed facts, 20 C 292

act disclosed by record is presumed to have been legally done, 25 C 602

may reverse for error apparent on record, though not assigned, 44 C 121, 47 C 582

court will entertain writ of error to affirm judgment in accordance with advice, to allow party to remove cause to United States Supreme Court on constitutional question, 44 C 392

will not presume actual fraud when none is found by trial court, 58 C 82

will presume negligence under statute, where finding shows fire was caused by locomotive of railroad company, 60 C 135

——even though finding makes no reference to negligence, 60 C 135

will presume that evidence was received for a proper purpose where offer and objection were general, in absence of any finding to the contrary, 60 C 373

where new trial was granted for reformation of deed and judgment, but lower court gave a retrial of facts, *held*, on appeal, that this court would consider the facts as found on the first trial, 61 C 401

informality of appeal under new law disregarded, 64 C 462, 72 C 403

——so where error is clear, 85 C 679

minor grounds of demurrer, curable by amendment, disregarded to pass on main issue, 65 C 326

——so minor points which might be raised, 66 C 134

where facts found were written on margin of request for finding court regarded them, 66 C 56

an issue, prominent and liable to be again presented, considered, though another point was decisive, 66 C 315, 81 C 655, 82 C 5

——but an issue not liable to arise again and which might cause embarrassment was disregarded in such case, 68 C 71

court will strive to uphold judgment entered on stipulation, 67 C 70

court passed on question irregularly presented where error was apparent and public interest involved, 67 C 222

——so where question was one of practice frequently arising, 67 C 278

——so where interpleader fairly presented questions, though it was perhaps not properly brought, 84 C 364, 85 C 573, 88 C 157, 89 C 332

——so in suit to construe deed of trust, 84 C 497

——so where finding was made in jury case and no one objected, 86 C 281

——so where case fully argued, court overlooked failure to close issue, 87 C 614

——so in assigning error, where no objection made, 81 C 656

error of the court caused by overlooking statute to which neither party adverted is nevertheless subject of review on appeal, 72 C 157

it is presumed that trial court acted properly, 73 C 136, 75 C 42, 60, 553, 76 C 340, 77 C 633

——and that its committee did, 71 C 190

——as in assessing damages for continuing trespass over proper period, 76 C 311

——in scanning with care claim for support for relative, 80 C 19

——in fixing law day for different incumbrancers, 76 C 388

——in visiting premises, 80 C 497

——in using evidence only for proper purposes, 70 C 530

——in admitting it only for proper purposes, 79 C 581, 88 C 184

——in excluding evidence only on proper ground, 80 C 298

——in charging jury where no question made, 83 C 97

——in fixing amount of fine in criminal case, 83 C 1

——in tort action, in setting aside verdict as to one only of several defendants, 83 C 29

——but not in striking case from jury docket unless facts support action, 90 C 133

court assumes that trial court would not make void order, 73 C 238

——that if evidence, offered at improper time and excluded, was later offered, it was admitted, 77 C 640

——that jury took law from judge, 80 C 531

——and did not misunderstand charge, 90 C 381

——and regarded requests read to them and treated by counsel as charge from that standpoint, 71 C 3

——that parties "heard" were fully heard, 84 C 39

——but no presumption or intendment will aid the State in criminal prosecution, 84 C 93

appeal transfers cause for all appellate purposes, 73 C 435

on appeal after hearing in damages complaint taken as true unless found untrue, 74 C 382

on appeal from demurrer, facts later appearing may be consulted, 74 C 689, 83 C 554, 634, 87 C 341, 403

——so in an appeal from abatement, 76 C 414

court is cautious in drawing inference from finding outside scope of trial court's inquiry, 77 C 291
where public interest is involved, court may remand case for further finding, 78 C 250
court heard case involving salary of its own members where parties waived disqualification, 78 C 536
where demurrer to answer presents fundamental question, demurrer to complaint may be overlooked, 79 C 470
where cross-complaint was defective in substance, court disregarded technical faults, 80 C 374
court will not speculate as to motives of pleader, 80 C 552
court must apply statutes of foreign state correctly, though trial court did not, 81 C 164
court refused to discuss questions of evidence not material to decision where no new trial ordered, 81 C 622
——and so an issue, where new trial ordered on another ground, 82 C 280
whether complaint is sufficient on demurrer is limited to facts as they appear in complaint; cannot consider facts stipulated, 82 C 91
important rulings not properly assigned can be considered on appeal, 82 C 214
where same questions arise on finding and ruling on demurrer, only former regarded, 82 C 298, 85 C 50, 67
where there is no rule established, the court adopts the one most likely to do justice, 82 C 571
deeds are to be upheld; rights are to be upheld, not forfeited, 83 C 231
effect of prior opinion as to correctness of charge where point in question not brought up, 83 C 324
court will not follow an inadvertent expression in a former opinion, 83 C 371
it will not pass on question not properly presented where to do so would prevent party raising question of constitutionality in United States court, 84 C 606
where two appeals taken and decision on one is conclusive, court may pass on other, to determine costs, 85 C 271
appellate court not justified in assuming court found certain facts in absence of finding to that effect in record, 90 C 539
evidence assumed to affect amount of damages unless finding shows otherwise, 91 C 338
court regarded demurrer to answer in light of facts alleged in reply, 91 C 354
——and demurrer to complaint in light of finding, 92 C 646
court overlooked minor error of procedure, 92 C 7
court assumed judge used proper, rather than improper, evidence, 92 C 208
overlooking statute in trial court, though neither parties nor court knew of it, may be error, 92 C 551
that decisions of trial court are well founded and judgments are regular is to be assumed unless contrary appears, 93 C 146
——and this applies to report of committee, 93 C 149
defects in record overlooked in murder case, to rule on real question, 93 C 343
where one point decisive of case, court nevertheless gave opinion on others bound to arise on retrial, 93 C 377
statements in opinions to be read in light of exact question at issue, 93 C 401
where both parties appeal, one states that he does not press appeal if it involves new trial, and it would, court will not consider it, 93 C 422
where committee's report failed to include subordinate facts, court regarded them under stipulation of counsel stating them, 95 C 538
court will not readily infer improper purpose by State in questioning witness as to prior conviction of accused, 96 C 638
court will decide case on facts found, though incomplete, 98 C 375
filing specification of errors to be pursued in brief or argument; effect of violating rule, 99 C 525
court considered validity of amended complaint as against demurrer, though trial court inadvertently passed only on original complaint, 102 C 126
failure to deny allegation of special defense disregarded where memorandum of decision states that case went to trial without objection, 102 C 642
duty of Supreme Court to dismiss action for want of jurisdiction whenever it appears, whether question raised or not, 105 C 502
appeal from decision on motion for new trial though joined with one from original judgment, is to be determined without regard to issues raised by latter, 105 C 710
on appeal in compensation case defects in procedure not prejudicing right are disregarded, 106 C 2
where evidence is admitted subject to later connecting proof court will assume that this was offered, 106 C 308
where pleadings failed to raise issue parties desired determined, court refused to consider it, 107 C 353
stipulation to be bound by decision in companion case; issues cannot be later relitigated, 108 C 45
important matter may be considered though not assigned as error, 108 C 454
in matter of public interest court instead of merely dismissing appeal where there was no final judgment, outlined procedure for speedy determination of matter at issue, 109 C 46

overruling demurrer based on lack of allegation of certain fact, becomes academic when on trial that fact is found, 112 C 646

when there is no judgment or ruling from which appeal can be taken, attempted appeal must be dismissed on motion of parties or by court on its own motion, 115 C 678

court will not assume that committee made improper use of evidence, 117 C 82

where matter was one of public interest and consequence, defective way in which record came up was disregarded, 117 C 307

ordinarily, whether or not court will entertain reservation determined before assignment of case, 117 C 663

——but where reason for not entertaining it develops upon hearing, it may then decline to consider it, 117 C 663

where no exception is taken to charge, it is assumed jury were correctly instructed, 119 C 346

court will not consider vague and obscure assignment, 119 C 438

appeal voidable by plea in abatement because not filed in time, considered on merits when no plea filed, 119 C 442

power of court to amend judicial records to make them speak the truth, 119 C 564

——thus record of recognizance for appeal stated to be taken by defendant may be amended to show it was in fact taken by plaintiff, 119 C 564

whether deficiency in charge was harmful error not considered when not made ground of appeal, 120 C 46

appellant having sought relief under zoning regulations cannot be heard to question their constitutionality, 120 C 455

where, on appeal, it was discovered that judgment file did not accord with memorandum of decision, attention was called to it to enable necessary steps to be taken in trial court to correct judgment file, 121 C 88

court considered question whether relator could legally occupy two public offices, though he afterward resigned from one of them, 121 C 242

court called attention to oversight in making up judgment file so that defect might be corrected, 121 C 432

where error requiring new trial on appeal from judgment is found, court did not consider appeal from refusal to set verdict aside, as result would have been same, 122 C 25

where there is no appeal from court's charge, it is presumed that jury were correctly instructed, 122 C 649

where issues on plaintiff's appeal conclude case, not necessary to consider defendant's appeal, 123 C 371

where there would be no occasion to vary application of regulations if attempted change in regulations finally held invalid, the appeal as to this ponit not determined but continued on docket, 123 C 471

though complaint did not allege such impossibility or impracticability as to bring case within doctrine of approximation, court pursued this inquiry though issue could only be determined in another action, 124 C 491

collaboration in opinion on part of all members of court, 127 C 549

where jury expressly based verdict on finding that plaintiff proved express contract and its substantial performance, Supreme Court did not consider his alternative claim based on quantum meruit, 128 C 228

Supreme Court could not use public documents because they were evidential and to do so would require determination of essential factual issue, 129 C 80

where action was equitable and a remand necessary, court acted under stipulation and determined issues in light of defendant's death subsequent to argument, 129 C 211

where complaint as to omissions in charge came as afterthought on part of experienced counsel, claimed errors will be scanned with care; but where errors concern vital issues, counsel's conduct cannot affect right of relief, 129 C 560

liberal policy of court where layman appears pro se, 129 C 594

§ 46. ——Following Trial Court and Counsel

where question was assigned and argued as question of law, court so treated it, 65 C 118

——so it confined itself to question assumed by parties to be the only one at issue, 70 C 489

——so it followed agreement of counsel that it might regard pleadings as broad enough to cover facts found, 70 C 540

court stated first impression on defective appeal where both parties desired decision, 71 C 462

court overlooked generality in demurrer, where no objection made, 73 C 539

where answer relies on date in complaint, court treats it as true date, 77 C 528

court accepts issues as framed on pleadings, 83 C 666

court decided matter as interpleader though no judgment to interplead appeared, where parties so treated it, 84 C 209

where case is tried upon certain theory, court will adopt that theory, 85 C 147, 86 C 361, 551

Supreme Court adopts construction of demurrer to which all parties agree, 91 C 514

question which trial court expressly finds that it is unnecessary to determine is not to be considered, 93 C 118

where both parties treat pleadings which set up a general practice as stating facts in case in question, court will follow, 94 C 213
court followed construction placed upon pleadings by trial court and counsel, 96 C 401
in passing on demurrer court not restricted to grounds considered by trial court, 96 C 541
court may follow parties and trial court in treating defective statement of cause of action as good, 105 C 476, 485
this court may accept the theory upon which case was tried below and presented upon appeal, 107 C 101, 568, 574
where parties adopted certain construction of statute, court did not question its correctness, 107 C 101
general demurrer considered where parties and trial court treated it as raising question whether complaint stated cause of action, 107 C 117
where case tried on theory that action was based on use of intrinsically dangerous substance, Supreme Court decided it on same theory, 107 C 568
where parties treated complaint as setting up conversion, Supreme Court did likewise, 107 C 574
where parties tried trespass action as though title actually in issue, Supreme Court followed same course, 109 C 693
on demurrer to criminal information based on municipal ordinance, court followed counsel in assuming whole ordinance was before court, 110 C 292
where case tried on theory that note was negotiable, court so treated it, though it was in fact not negotiable, 111 C 568
where case was tried as one of negligence rather than wanton misconduct, court treated it accordingly, 115 C 65
where parties and trial court assume existence of certain facts alleged in counterclaim as bearing on demurrer to complaint, Supreme Court followed, 115 C 633
where both parties argued issue, and remand would require its determination with probably a second appeal, court considered it, though it was not decided in court below, 123 C 192
though motion to quash mandamus improper in alleging facts, this court treated it as parties did, as serving function of answer, 126 C 215
where appeal argued exclusively on one aspect of case, case decided on that issue, 127 C 80
where claim of alteration not clearly raised in pleadings but parties treated it as sufficiently raised, Supreme Court followed that theory, 128 C 248
where complaint construed at trial to set up cause for breach of agreement to make loan and case tried on that theory, Supreme Court considered it accordingly, 129 C 413
rulings on evidence considered generally rather than specifically in view of counsel's method of so treating them, 129 C 690

§ 47. ——Parties

judgment defective by error of court may be assigned as error by party advantaged, 4 D 141
motion in error lies only in favor of party aggrieved, 44 C 179
——plaintiff in replevin not aggrieved by judgment for defendant not embracing return of property, 44 C 179
under statute, the right of appeal depends upon the fact of being a party and not upon the question whether he is actually aggrieved, 60 C 427
——sheriff is the real and proper defendant in certain habeas corpus proceedings, 60 C 428
notice to state's attorney where trust for hospital was involved and it did not appear, 64 C 321
in will case, though necessary parties not present, court may act, if decision is favorable to them, 67 C 14
——or if decision affecting parties present will probably determine case, 71 C 222
——or if only one decision is possible, or rights of nonappearing parties will not be prejudiced, 83 C 655
——so, where necessary parties are not present, court may decide issue, and remand case for lower court to summon them in, 87 C 677, 88 C 86
——executors personally interested should so appear, but court may overlook defect, 72 C 256
——but when all parties interested appear, court will not hear executor, 79 C 362
appeal from justice court by one of two joint defendants vacates the judgment against that one only, 67 C 256
decision should be limited to rights of those who are parties, 69 C 10
appeal by receiver from order claimed to be void, 69 C 709
——but he cannot appeal from order removing him, 70 C 479
where judgment assigned is vacated by appeal, assignor proper party to appeal, 71 C 613
where some defendants appeal, others may be heard, 73 C 428, 75 C 605
right of bankrupt to appeal in action begun before bankruptcy by attachment where conveyance is alleged to be fraudulent, 74 C 616
nonjoinder of party waived by argument on merits, 75 C 605
——and court may overlook nonjoinder of parties whose interests will not be affected, 67 C 14, 80 C 460

in divorce action, court regards interests of parties not appearing, 78 C 242
right of taxpayer to appeal in suit against city, 81 C 235
ordinarily, if necessary parties not present, court will not act, 81 C 442, 91 C 501
if plaintiff dies after judgment in his favor, defendant must procure his administrator to be party, 82 C 208
district attorney of the United States heard where question was constitutionality of federal statute, 82 C 374
questions affecting those not parties not answered unless necessary to decision, 86 C 585
where, in action ex contractu, one defendant has judgment but other loses, former is not party to appeal by latter, 97 C 223
where only objection to relief in trial court was absence of necessary party it may be directed to have him made party and then to enter decree, 100 C 686
where one not formerly made party, entered in trial court, was treated as party and appeared, too late to object in Supreme Court, 109 C 329
where two parties filed separate appeals, but one did not appear to argue or file brief, his appeal was disregarded, 110 C 685
where parties are numerous and action is brought by one or more in behalf of all, improperly because the interest of others was adverse to that of plaintiffs, but judgment accorded others all that they could have claimed, judgment was sustained, 118 C 526
plaintiff moved appeal be erased on ground that R.F.C. was necessary party to determination of questions involved and was not made party; *held* while R.F.C. would not be bound, proper for court to give advice to receiver necessary to enable him to perform functions, 119 C 115
suit by beneficiary of insurance policy to set aside trust disposing of its proceeds and have declared invalid change of beneficiary to trustee, determined, though beneficiaries of trust or representatives of estate not made parties, 119 C 573
——decision not conclusive on rights of persons not parties to action, 119 C 573
where, since taking appeal, defendant B had died and no representative of his estate appointed, Supreme Court could enter no judgment which would affect his estate, 121 C 640
——but B not affected where defendant D Co.'s appeal was dismissed by trial court and this action affirmed in Supreme Court, 121 C 640
administrative board, where it represents public interest intrusted to its care, may, as such, be made or appear as party defendant in appeal taken from its order or, when trial court has overruled its decision, prosecute an appeal to Supreme Court, 127 C 16
where administrative board is party to appeal from its order, it may not be dismissed merely because controversy involves only private interests of individual, 127 C 23
where at hearing in Supreme Court on reservation it appears that certain of numerous parties had been appointed to represent all but that one took an opposite view, the Superior Court cited him in and he consented that default might be entered against him, 128 C 362
where party died pending appeal, Superior Court substituted successor and he consented to decision of case without further hearing, 128 C 426
though complainants claiming defendant be held in contempt were not parties to original judgment granting injunction, no objection being made, Supreme Court considered case on merits, 129 C 416
where all relevant facts did not appear on record in receivership proceedings, Supreme Court would not make definite ruling which might affect many certificate holders not appearing or represented before it, 129 C 464

§ 48. ——Judgment of Supreme Court and Its Effect

§ 48(1). In General

reversal of judgment on arbitration note revives note, 1 R 422
status of case when remanded, 1 D 152
——case is the same, 73 C 413
——and so is status of parties, 81 C 719, 85 C 271
after reversal of arrested judgment for insufficient declaration, plaintiff is entitled to judgment on verdict, on re-entry, 1 D 153
after reversal assumpsit will not lie against assignee to recover back sum paid, 2 D 153
case will not be held for further argument, after affirmance, 2 D 338
procedure where Supreme Court overruled by United States Supreme Court, 1 C 102
judgment on reversal carries what damages, 1 C 153
reversal vacates whole judgment if it is not separable, 4 C 196, 77 C 537, 78 C 202
rule to order officer to pay money into court after reversal, refused, 6 C 373
cause not remanded on reversal if inferior court had no jurisdiction, 8 C 164
judgment if divisible may be reversed in part only, 8 C 458, 32 C 15, 46 C 373, 58 C 375
practice in trial court on reversal by Supreme Court; remanding case for ulterior proceedings, 12 C 101
a judgment is vacated and annulled by reversal, 17 C 73

on reversal cause is re-entered for retrial, without order to that effect, 17 C 67
clerk's duty to re-enter cause without a formal remanding, when, 35 C 102, 106
——re-entry after first term, when allowable, 35 C 103, 107
when former finding of facts is not affected by reversal, 46 C 38
damages awarded; case remanded on motion in error, but not on any point affecting damage; *held* after demurrer overruled defendants were not entitled to a new hearing in damages, 50 C 215
actual damages found but only nominal damages given; judgment reversed; *held* defendants could not plead anew and have a new hearing on the facts, 50 C 342
——especially where no exceptions were taken, 50 C 343
——lower court should render judgment for actual damages, 50 C 344
Supreme Court may revise administrator's account without reversing judgment of lower court, 54 C 229
form adopted to bring case up will not hamper court in giving proper redress, 63 C 456
where judgment is entered in trial court in accordance with opinion of Supreme Court, judgment, not opinion, determines issues, 65 C 116
where trial court improperly passed on question, cause was remanded with directions to enter judgment on portions properly determined, 65 C 183
if accused is found guilty on two counts by general verdict and either is good, judgment stands, 66 C 255
judgment file of clerk is authoritative expression of judgment; if rescript is ambiguous, opinion should be consulted, 72 C 444
bill of exceptions cannot enlarge judgment as to party not appealing, 72 C 562
on reversal of one judgment, others dependent on it fall, 73 C 414, 75 C 393, 85 C 271
portion of judgment may be struck out, 75 C 251
——or certain amount of damages may be added, 75 C 301
——and if erroneous part of judgment can be separated and justice done, court may modify judgment, 83 C 34
——and where issues properly determined, but judgment on them is erroneous, court may modify it, 83 C 118
where there are several parties, final judgment must determine rights of all, although some only appeal, 76 C 394
where judgment is for one defendant and against rest, judgment for former may be separately affirmed, 78 C 285, 71 C 64
——so judgment doubling or trebling damages may be reversed as to that part alone, 66 C 578, 87 C 253
on remanding of case, reversing action of lower court in overruling demurrer, judgment should be given on demurrer; good, if any grounds of demurrer are sound, 79 C 603
if any one of several defenses is good, judgment for defendant stands, 80 C 124
Supreme Court does not appoint time for execution of criminal, 81 C 22
if set aside, it is as if no such judgment had ever been entered, 81 C 719
if final judgment on will case is given, Superior Court cannot retain case to settle fees on appeal, 82 C 189
judgment where Supreme Court of the United States reverses our court, 82 C 702
judgment against several tort-feasors may be reversed as to some only, 83 C 29
on appeal where cause fully tried judgment will be modified rather than set aside, 83 C 35
where question first raised by demurrer is same as that raised by finding of fact, decision on first appeal is decisive, 83 C 242
effect of decision as to construction of will, 83 C 369
part of decree affecting one party, as to which no one objected not disturbed, 83 C 700
court remanded case with directions to exclude item erroneously included, 84 C 24
if finding shows judgment in part based on error, new trial should be ordered, 85 C 212
judgment reversed on writ of error and remanding of cause puts parties in the same condition as before erroneous judgment rendered, 85 C 271
extension of time for redemption of mortgage where law day expires pending appeal, 85 C 383, 90 C 652
remanding case with directions to enter judgment for less amount than originally given, 85 C 640
portion of judgment granting injunction may be affirmed, rest set aside, 90 C 108
decree too sweeping in effect will be modified, 90 C 108
date for redemption fixed by Supreme Court if day originally fixed gone by, 90 C 652
in fraud action, trial court set aside a mortgage and gave damages; Supreme Court found error as to former, and directed that damages be increased by its amount, 91 C 128
on remanding, case goes to court or jury docket from which it came, 91 C 703
where trial court granted injunction, Supreme Court found error as to it, and, all facts appearing, directed judgment for certain amount of damages, 92 C 24
part of probate decree may be affirmed, and rest set aside, 92 C 286

demurrer to a defense determined insufficient on appeal, is properly sustained on retrial, 92 C 342

if demurrer is erroneously sustained for one defendant, though on appeal it appears that judgment must go against plaintiff, still judgment must be reversed, 93 C 570

in injunction suit, court remanded case, with directions that injunction be modified, 96 C 273

where in foreclosure action judgment for full amount of deed was given despite breach of contract by mortgagee who sold land to mortgagor, case remanded for allowance of damages for breach of contract, 97 C 345

where in case for false imprisonment based on arrest for intoxication, trial court found justification not within pleadings, and neither complaint nor answer presented real reason for arrest, case was remanded with suggestion that amendment be permitted, 97 C 696

erroneous striking out from pleading general allegation of want of jurisdiction does not require remanding if remaining allegations show jurisdiction, 98 C 251

where in foreclosure court had all figures before it, it remanded case with direction to enter judgment of foreclosure unless amount due was paid in certain time, 98 C 665

if ultimate conclusion of fact is erroneous it falls out of case and if essential the judgment cannot stand, 99 C 356

if only conclusion legally possible on facts calls for judgment for plaintiff judgment should be directed for him, 99 C 495

reversal annuls judgment but does not necessarily set aside foundation on which it rests, 99 C 511

——if facts properly found court may apply law to them and direct judgment, 99 C 511

when conclusion of law upon facts found dictates the judgment, affirmance or reversal may be ordered without requiring new trial, 99 C 511

if interest erroneously allowed appears as separate item it can be deducted without ordering new trial, 99 C 574

where workmen's compensation was denied, judgment was reversed and case remanded to enter judgment in accordance with opinion, 102 C 6

in workmen's compensation case where finding is incomplete, case should be returned to commissioner for further finding, 102 C 234

appeal results in judgment which awards costs and may award damages within constitutional limits, 103 C 732

——execution may issue or judgment lien be filed, 103 C 732

duty of receiver to protect creditors; if he fails to do so, Supreme Court may on appeal correct judgment of its own motion, 103 C 732

failure of judgment after reversal to conform to record is clerical error which may be corrected after term, 104 C 107

judgment against A and B; *held* judgment as against A not affected by reversal as against B on latter's appeal, 104 C 107

mandate must be carried out specifically by trial court, 105 C 242

where larger judgment ordered for plaintiff, trial court can only compute interest from date of original judgment, 105 C 242

if error found and cause remanded, force of original judgment is destroyed and new trial of all issues is required, 105 C 249

duty of Supreme Court to dismiss action for want of jurisdiction whenever it appears, whether question raised or not, 105 C 502

in action for declaratory judgment, court determines rights on facts found, not limited by issues framed or claims of parties, 107 C 656

when facts show plaintiff entitled to judgment, cause may be remanded for assessment of damages, on the evidence already taken, 108 C 560

where compensation case remanded for award for partial incapacity, but on rehearing total incapacity appeared, award for that was proper, 110 C 284

court refused to send case back because of ruling on demurrer when result would be same, because fact later proven, 111 C 126

Supreme Court may fix law day when time for redemption has passed pending appeal; better practice to leave matter to trial court, 112 C 439

where judgment is directed on verdict erroneously set aside, judgment cannot include interest, 112 C 452

——but judgment was directed to be entered nunc pro tunc as of day verdict rendered, 112 C 452

judgment that there was no error precludes raising by writ of error questions which might have been presented upon appeal, 114 C 730

proper judgment where law days fixed in foreclosure have passed, 115 C 498

judgment cannot be set aside for excessive damages unless it appears that trial court unreasonably exercised discretion, 117 C 108

court called attention of trial court to clerical error in amount of judgment which was not made ground of appeal, 117 C 456

where $30 item for veterinarian's services improperly included in judgment but interest of over $30 properly allowable was not included, judgment not set aside, 117 C 510

where judgment, based on answers to interrogatories, for party against whom general verdict was rendered, was reversed and case remanded for decision on motion to set verdict aside, court expressed opinion on latter motion, evidence having been printed, etc., though it could not be binding, 119 C 630

judgment ordered corrected so as to set aside conveyance found fraudulent so far as it might operate to obstruct creditor in enforcement of judgment, 120 C 672

declaration of rights not given where under decision of Supreme Court it was doubtful if issue be of practical consequence, 121 C 631

where in action by town and school district to collect taxes joint judgment was rendered, case was remanded for judgment to state amount due each, 123 C 543

where plaintiff did not press appeal from judgment in favor of defendant A unless defendant B prevailed in his appeal, unless court erred in rendering judgment against latter, unnecessary to pass on judgment for defendant A, 124 C 17

when foundations sufficient to support judgment are found to exist, modification of judgment rendered is proper with view of ending litigation, 124 C 54

——case remanded with direction that judgment, which simply directed board to issue certificate of occupancy, be modified to order this be done under such terms and conditions as board might prescribe, 124 C 54

where judgment entered on pleadings after demurrer overruled and on appeal therefrom ruling on demurrer is sustained, case is ended and will not be remanded for further proceedings, 124 C 342

where court correctly concluded that civil service classification had not demoted detective sergeant to police sergeant, and both parties agreed, but this was not incorporated in judgment, case remanded for necessary correction, 125 C 344

having all facts before it court does not rule upon what would be result of some of them standing alone, 127 C 710

——so technical defects in proceedings of liquor commission overlooked where it was apparent same result would be reached on rehearing, 127 C 710

clerical error in date recited in judgment corrected by Supreme Court, 128 C 621

ordinarily the proper judgment where a court erroneously fails to adjudicate an issue is to remand the case that it may do so, 128 C 644

——but where record presented entire proceedings and question was essentially one of law, Supreme Court answered it, 128 C 644

§ 48(2). New Trial or Reversal in Whole or in Part

reversed as to minors, may be good as to adults, K 116

if erroneous portion is separable, new trial may be restricted to that portion, 1 R 138, 8 C 458, 15 C 101, 31 C 62, 32 C 15, 64 C 320, 72 C 657, 76 C 585, 80 C 402

——as in assessment of damages, 64 C 320, 68 C 237, 71 C 452, 72 C 617, 74 C 546, 75 C 197, 79 C 189

——in suits for construction of will, 65 C 183, 67 C 19

——or only error as to relief given, 79 C 284

——or in form of judgment, 74 C 661

judgment reversed as to costs alone, 1 R 138

will remand, if judgment is too great by mistake; but will not assess damages, 1 D 205

not reversed, nor execution denied, for inartificial conclusion, 3 D 502

remanding case on reversal, 3 C 587, 5 C 474, 12 C 101

against several, if entire, must be reversed in toto or affirmed in toto, 4 C 190

proceedings on reversal of judgment for damages greater than demand, 4 C 311

judgment may be erroneous in part and valid as to residue, 39 C 82

——under statute de prevention and removal of nuisances, 39 C 82

a "new trial" granted upon motion for error upon a former trial means a new trial of the issues of fact before tried, 45 C 397, 63 C 457

——but court had power to limit new trial to conclusion of court as to law upon the facts, without disturbing the finding of facts, 45 C 397

if divisible, may be reversed for erroneous part and affirmed for residue, 46 C 370

where interpretation of the will is necessary to determine liability for a violation of a testamentary trust, court will remand, 58 C 355

where error is severable it does not vitiate the whole judgment; the part erroneous is set aside, the rest stands, 58 C 375

motion for new trial granted, "at which the Court of Common Pleas may reform the deed" and render judgment for breach of covenant, etc., *held* not to grant a new trial as to the facts, 61 C 401

new trial will not be ordered where it would be unavailing, 64 C 397, 72 C 617

——or where no error appears though court cannot see how decision was reached, 65 C 442

——or where there are irregularities in reaching judgment responsive to issues and supported by facts, 68 C 201

if erroneous ruling as to damages enters into whole judgment, all fails, 67 C 400
——so where error lies at basis of judgment and justice requires retrial, 81 C 467
——so where injunction granted was too broad, 70 C 516
——so where judgment in contract action against two is reversed as to one, 75 C 605
——or judgment is joint and only one party appeals, 89 C 214
new trial not granted where substantial justice has been done, 68 C 579
——as where action was brought at law instead of equity, 71 C 250
——but court set aside judgment for error in admitting evidence, though new trial could not result differently, 70 C 647
if all facts of record, judgment may be given without new trial, 72 C 444
——but not if finding is uncertain, 75 C 519
——or is so altered on appeal as to materially change basis of judgment, 82 C 619, 86 C 481
——or is based in part on inadmissible evidence, 84 C 694
if little more than nominal sum involved, court hesitates to grant new trial, 72 C 561, 79 C 108, 85 C 629
——unless substantial rights are involved, 67 C 255, 84 C 556
where plaintiff gets substantial damages and is only entitled to nominal, case should be remanded, 75 C 42
case not remanded where such course would not serve ends of justice, 78 C 422
whether trial court can require new trial as to one issue only, as Supreme Court may do under statute, quaere, 81 C 104
granting of new trial only remedy for erroneous refusal to set verdict aside or to direct verdict, 81 C 578
new trial allowed if appellant's claims are proven and there are no undisputed or proved facts inconsistent therewith, 81 C 615
if nonsuit for variance is properly granted, case should not be remanded, 82 C 236
new trial is not the remedy where jury bases case on undisputed facts variant from complaint, 82 C 349
new trial granted if legal rights have been invaded even though damages are only nominal or the breach resulted in a benefit, 84 C 555
new trial ordered when finding based on inadmissible evidence, 84 C 694
if, on appeal, material corrections are made in finding, new trial is ordered, 86 C 481
if the only damages that could be awarded were nominal, no new trial is granted, 86 C 552
joint judgment, set aside as to one defendant, cannot stand against other, 89 C 202
judgment for new trial unless claim for damages amended to equal those found, 89 C 254
new trial must be ordered where trial court directed remittitur and it is not filed, 89 C 712
severable judgment may be set aside as to erroneous part; affirmed in other respects, 90 C 108, 92 C 286
opinion of court granting new trial becomes law of case, 91 C 430
where injunction restraining erections on certain land included certain land improperly, case was remanded for determination of exact lines to be included, 93 C 233
if charge as to damages is erroneous and court cannot see how those awarded were made up, retrial of entire case is necessary, 93 C 422
if damages inadequate, must ask for new trial de novo; cannot have verdict stand, 94 C 503
when new trial may be directed as to certain issues only, 94 C 503
where it appears that case had been disposed of in lower court upon side issue, the real issue being overlooked, case was remanded, 95 C 300
judgment may be affirmed on several counts and counterclaim and new trial ordered on one count, 95 C 600
practice of ordering new trial unless portion of judgment erroneously included is remitted approved, 96 C 342
reversal by itself not grant of new trial, 96 C 412
——if facts proved lead to definite conclusion, that should be adopted, 96 C 412
where court failed to allow buyer of goods damages for nondelivery of one of several instalments, case remanded with directions to determine such damages and add them to previous amount adjudged due, 97 C 122
where recovery possible as regards part of plaintiff's claim, on reversal of judgment for defendant, new trial restricted to that part, 97 C 164
where action is based on wrongful refusal to reconvey property, on error as to damages, that issue alone need be retried, 97 C 275
where court found against one party on one issue and failed to pass upon another claim by him, case was remanded to determine latter issue only, 98 C 399
in action against principal and claimed agent, error in charge as to proximate cause requires verdict to be set aside as to both, though issue of agency correctly submitted, 98 C 521
in action for abatement of nuisance court con-

ditioned order for new trial on failure of defendant to furnish bond as provided in the statute, 103 C 19
if error found and cause remanded, force of original judgment is destroyed and new trial of all issues is required, 105 C 249
where conditions governing trier's conclusions materially varied by corrections of finding, new trial must be ordered, 105 C 429
when judgment for defendant on issue of liability reversed, new trial may be limited to assessment of damages, 105 C 657
plaintiff not necessarily entitled to new trial where only result would be nominal damages; or where substantial justice done, 106 C 34
ordinarily new trial not granted to enable plaintiff to recover nominal damages, 106 C 167
——but it will be where action is for nuisance in pollution of stream, 106 C 167
new trial ordered with direction to enter judgment for injunction after hearing as to its terms, 106 C 422
when statute is passed affecting a judgment and pending an appeal from it, Supreme Court will remand case to Superior Court for further hearing, 106 C 698
where only error in charge is as to damages, new trial may be limited to their assessment, 107 C 68
new trial may be limited to assessment of damages in jury case as well as court case, 107 C 68
new trial will not be ordered for trivial error amounting to only $21, 107 C 532
new trial to jury may be limited to damages where only error was as to admitting evidence upon that issue, 107 C 574
only remedy for erroneous refusal of trial court to direct verdict is new trial, 107 C 728
unless substantial rights involved, new trial not ordered for nominal damages, 108 C 97, 109 C 452
new trial will not be granted because damages, whether nominal or substantial, are inadequate, if no actionable negligence exists, 112 C 228
new trial not ordinarily granted to enable plaintiff to recover nominal damages; certainly not if substantial justice has been done, 117 C 257
where finding as corrected presents radically different situation from that upon which trial court reached its decision, new trial proper, 117 C 314
where court made improper allowances for services of veterinarian but failed to include interest on value of horse that died, amounting to more than sum allowed, new trial not granted, 117 C 510
where changes in finding are so serious as to invalidate the judgment, a new trial is directed, 118 C 36, 121 C 586, 123 C 433, 125 C 537
where finding is so corrected as to materially affect conclusion of court as to negligence, case should be remanded, 118 C 263
where complaint states two causes of action and there is general verdict for plaintiff and no error is found as to first, error as to second not ground for new trial, 119 C 403
where one of two defendants was liable in alternative, direction of verdict in favor of one is equivalent of direction of verdict against other; if there was error both are entitled to new trial, 120 C 140
court remanded case where judgment contained obvious error, though appellant did not make claim at trial, 121 C 290
case remanded for new trial when consideration below not directed to elements of situation which assumed increased importance from decision of Supreme Court, 121 C 447
case returned for further proceedings when, due to happenings since commencement of action, complaint not wholly applicable to situation, 121 C 454
case remanded so that amendment to certificate of incorporation, attempted to effect tax exemption, and held invalid, might be made in manner required by statute, 121 C 475
complaint was in equity, amendment claimed conversion, jury answered interrogatories which would have entitled plaintiff to equitable relief to part of property and gave general verdict for $200 which court set aside, 121 C 646
——Supreme Court could not direct judgment on complaint in accordance with answers to interrogatories, issues being equitable, 121 C 646
——as there was nothing to show verdict was addressed solely to amendment, only course to be taken is to retry case, 121 C 646
where trial court, erroneously finding for defendant on general issue, did not pass on special defense and defendant might be able to establish it, new trial was ordered, 124 C 604
where, in probate appeal, Superior Court failed to consider matter of deduction from transfer held subject to inheritance tax, court sustained conclusion of taxability but remanded case with direction that the Superior Court determine whether there should be deduction, 125 C 691
error in sentence did not affect verdict of guilty and case remanded for new judgment on verdict, 126 C 62
though defendant entitled to judgment on main issues, where issues on cross-com-

plaint not disposed of by finding, new trial as to them only ordered, 126 C 441
where the necessary judgment from finding and conclusions of trial court was that defendant be acquitted, proper judgment of Supreme Court was that such judgment be rendered rather than new trial be had, 127 C 402
where plaintiff was seeking as its sole remedy an injunction and no error was found on its appeal, remand of case for retrial of issues pertaining to damages unjustified, 127 C 421
fact that defendants have been twice found guilty by a jury of first degree murder, no reason for not ordering retrial in case of error, 128 C 181
though new trial granted as to defendant trolley company, no need for further proceedings against defendant city where latter charged only with nuisance, and there was no ground for claim, 128 C 243
though error did not affect all items of bill of particulars, case was remanded for new trial of all issues, 128 C 433
——right to remand case for new trial, if error is found, is unqualified, 128 C 437
error in awarding $1 damages too inconsequential to justify remand, 129 C 576

§ 48(3). Remittitur

judgment for new trial unless remittitur is filed, 69 C 652, 71 C 2, 78 C 300, 81 C 101, 85 C 24, 87 C 686
where damage assessed as of wrong date, case remanded with directions to set verdict aside unless there is remittitur, 93 C 123
where error concerned element of damage of ascertainable amount, court ordered remittitur, 98 C 610
right of Supreme Court to order remittitur, 111 C 575
where judgment erroneously included amount of certain checks court ordered remittitur covering them, 121 C 201
where court awarded excessive damages, case remanded with direction to enter judgment for an amount less than that given, 128 C 300
judgment cannot be directed by appellate court on ground of excessive verdict without giving plaintiff option of filing remittitur or having new trial, (dis.) 128 C 303
——reasoning applied where constitutional right to jury trial not involved, (dis.) 128 C 303
judgment set aside unless additional remittitur filed, 129 C 585

§ 49.——Pleas and Motions

§ 49(1). Pleas in Abatement and Motions to Dismiss

where the case was not appealable it was erased from docket, 2 R 440
will not receive plea in abatement after third day, 2 D 552
after plea to merits below, appellant cannot plead in abatement above, 29 C 520
an appeal from decision of Superior Court on remonstrance to report of a committee does not lie under statute, and will be erased if taken, 63 C 576
plea in abatement for failure of request for finding to include claims of law, 66 C 551
plea in abatement for appeal to term already past, 67 C 19
appeal properly taken to Supreme Court not erased from docket because trial court had no jurisdiction of action, 68 C 560
plea in abatement for appeal not stating time and place of sitting, 70 C 329, 82 C 386
with what clerk plea in abatement to be filed, 70 C 339
erasure where judgment conforms to advice of court previously given, 71 C 589
plea in abatement which contains no prayer for judgment is demurrable, 72 C 444
plea in abatement for defect of parties, 73 C 432
plea in abatement for appeal to wrong return day, 74 C 438
filing of finding and of appeal after plaintiff's death and before entry by representative is nullity; appeal will be erased upon suggestion of amicus curiae, 74 C 729
plea in abatement by plaintiff's attorney who claims lien on judgment, overruled, since he is not party, 74 C 729
court may regard plea in abatement though filed after time, 77 C 395
erasure where want of jurisdiction is apparent, 79 C 46
office of plea is to set up new facts, 79 C 58
plea in abatement for taking appeal after time allowed, 79 C 526, 82 C 376, 89 C 667
erasure for misdescription of court, 79 C 710
dismissal of case in ignorance of fact known to parties which would uphold appeal, 82 C 208
failure to take appeal within time fixed should be attacked by plea, not motion, 82 C 377, 89 C 667
——so taking appeal to wrong term, 83 C 134
——form in each case, 85 C 618
——should state particular cause of abatement and how appeal should be taken, 85 C 618
plea in abatement to be filed at term to which appeal actually returned; one of two appeals joined may be abated, 82 C 386
determination of plea in abatement carries costs, 82 C 483
proper function of plea in abatement, 82 C 483
determination of motion to erase does not carry costs, 82 C 483

erasure where appeal is taken from judgment not final, 82 C 517
motion to dismsis for delay in having record printed, 83 C 128
answer to plea cannot deny facts of record, 83 C 316
plea in abatement is not proper way to secure erasure of assignment of error, 83 C 466
plea in abatement on ground that it did not describe court to which taken and that no bond to prosecute was given, dismissed, 83 C 574
effect of denial of motion to erase, 84 C 268
plea in abatement to writ of error assumes writ was brought to correct errors apparent on face of record, 87 C 608
case not erased in Supreme Court because there is no prayer for relief, 91 C 731
if appeal taken in case where it does not lie, it will be erased on motion, 95 C 69, 96 C 719
motion to erase appeal proper where judgment in question was not final, 96 C 719
plea in abatement must ordinarily be filed in time fixed by statute, 98 C 501
——if it is filed later, motion to dismiss is proper, 98 C 505
——motion proper when, 104 C 354
pleas in abatement proper way to take advantage of failure to appeal from decision on motion to set verdict aside within time allowed, 107 C 365
defective writ of error will be erased from docket, 108 C 144
where attempted appeal is taken from judgment not final, motion to erase is proper remedy, 108 C 307
pleas in abatement regarded with little favor, 108 C 451
motion to erase only remedy to attack appeal from judgment not final, 109 C 45, 110 C 319
——but court may dismiss appeal of its own motion, 109 C 45
motion exclusive remedy to attack appeal to Supreme Court from judgment not final, 110 C 319
motion to erase lies where it appears on face of record that appeal has not been prosecuted with due diligence, 111 C 663
motion to erase not proper method to take advantage of failure to seasonably appeal, 112 C 596
plea in abatement granted where assignment was not filed with appeal, in case where no request for finding made, 113 C 780
under statutes before 1929 plea in abatement to be filed not later than Friday preceding first day of term; term is next succeeding term after filing of appeal, 114 C 415
plea in abatement on ground that sum involved is small, denied, 114 C 707
where appeal is attempted from judgment not reviewable, it should be dismissed on motion or by the court on its own motion, 115 C 678
——in such a case jurisdiction cannot be conferred by waiver or consent, 115 C 678
motion to erase appeal from ruling granting motion to strike from jury list issues raised by cross-complaint, granted, 115 C 708
motion to dismiss appeal for various reasons denied; delay in filing evidence in appeal from denial of motion to set aside verdict, 115 C 721
failure to file assignment of errors within time provided is not ground for plea in abatement; remedy is motion to erase from docket, 116 C 160
plea in abatement goes to validity of appeal, not to failure to prosecute valid appeal, 116 C 160
plea in abatement goes to validity of appeal; motion to dismiss lies for want of jurisdiction which plainly appears on face of record, or where it appears on face of appeal that it has not been prosecuted with due diligence, 116 C 632
that applicant for modification of alimony decree has been in default of payments since judgment dismissing application, furnished no ground for plea in abatement or motion to dismiss appeal, 116 C 632
——motion that appeal be stayed until he has complied with terms of judgment proper, 116 C 632
——but motion not passed upon where appeal has been heard and stay would serve no useful purpose, 116 C 632
verdict against H, driver of car in which plaintiffs were riding, and in favor of W, with whose car it collided; *held* no reason to prolong litigation against W, and H's appeal from entire verdict dismissed as to W, 118 C 632
plaintiff moved appeal be erased on ground that Reconstruction Finance Corporation was necessary party to determination of questions involved and was not made party; *held* while R.F.C. would not be bound, proper for court to give advice to receiver necessary to enable him to perform functions, 119 C 115
plea to jurisdiction based on fact that recognizance by defendant provided that "plaintiff" shall prosecute appeal to effect; City Court having amended its record to accord with the fact, plea denied, 119 C 564
motion to dismiss is addressed solely to record; it is not proper to allege facts not appearing thereon, 122 C 327
——so admission by plaintiff at hearing on motion to dismiss appeal from probate could not enlarge scope of issues raised by motion, 122 C 330

where second mortgagee redeemed in foreclosure by first mortgagee, determination of questions raised on appeal from judgment in a foreclosure by second mortgagee of no practical benefit, and motion to erase granted, 122 C 664

motion to erase is proper method to raise question whether there was judgment from which appeal might be taken, 123 C 103

motion to erase appeal proper where there is attempt to take appeal when it appears on face of record that no appeal lies, 124 C 686

plea in abatement proper procedure where appeal lies but claimed defect is failure to take steps provided in statute and rules, 124 C 686

——so where appeal from denial of motion to set aside verdict and from judgment improperly combined in one appeal, defect properly presented by plea in abatement, not motion, 124 C 686

——but court gave appellant election to withdraw either appeal, 124 C 687

motion to erase rather than plea in abatement proper way to raise issue of right of appeal, 125 C 347

where plaintiff's reason of appeal, in appeal from allowance to prosecute appeal in divorce action, was that court erred in failing to hold that on face of record appeal of defendant was without merit, motion to erase denied, 125 C 467 (footnote)

where there is no final judgment, no appeal lies and attempted appeal should be erased from docket, 126 C 522

where appeal attempted from judgment not final, court must dismiss it even in the absence of a motion, 126 C 715

appeal of zoning board not dismissed because its attorney did not sign notice of appeal filed by other appellant, where it joined in later steps without objection of appellee, 127 C 16

appeal will not be erased on ground that it included appeal from decision not properly taken; plea in abatement proper procedure, 128 C 401

where in decision on motion to erase court left open question of improper joinder of appeals and pointed out proper procedure for determination, matter was waived when party did nothing about it, 128 C 696

fact that appeal is taken too late not ground for erasing appeal but is ground for abating it, 129 C 374

whether or not to entertain plea in abatement which is filed late rests in discretion of court, 129 C 374

——where appeal was filed year after judgment, Supreme Court overlooked relatively short delay in filing plea, 129 C 377

§ 49(2). Miscellaneous Motions

motion for order directing clerk of trial court to pay over money, 71 C 98

amendment of appeal must be made in appellate court, 72 C 86

amendment of return day in appeal, 74 C 438

motion for order directing judges to make finding, 78 C 250, 79 C 136, 89 C 284, 97 C 279

motion to make statement of evidence in aid of appeal from nonsuit, 82 C 132

motion to erase part of record on ground of impertinence not to be encouraged, 83 C 243

motion to recommit case where paragraphs of draft finding not marked, 88 C 25

motion to order trial court to certify evidence, 88 C 211

motion lies to strike from record special findings of fact where question arises on demurrer to complaint, 93 C 160

application to direct trial court to certify evidence denied, where procedure to correct finding improper, 109 C 354

court directed certain evidence not to be printed; party may move this court to print that evidence, 114 C 272

on novel point of procedure court disregarded defects in motion, 114 C 274

motion for order that evidence be printed in connection with claimed corrections in finding, denied; when trial court should grant extension of time, 125 C 491 (footnote)

§ 50. ——Costs

on reversal plaintiff in error entitled to costs in trial below, 5 D 122

new trial granted in slander action without payment of costs, to correct misdetermination of jury, 6 C 190

where new trial ordered, costs are taxed in favor of prevailing party, except record fee, which must abide final decision, 73 C 475

where four appeals were taken, but only one record was printed and one case was argued, only one attorney's fee was allowed, 74 C 274

——but where three cases were tried and argued together record fees in all were allowed, 70 C 443

party may prevail though not successful in all respects, 75 C 382

cost of printing certified copy of evidence, 75 C 382

defendant in criminal proceeding who prevails on appeal not entitled to costs, 82 C 393

where two appeals taken and decision of one is conclusive court may in its discretion pass on other to determine costs, 85 C 271

successful appellant not entitled to costs for printing unnecessary evidence, 88 C 260

where question was as to creditor's rights to reach beneficiaries' interest under trust,

trustee's expenses and counsel fees *held* payable from income of trust, not principal, 95 C 216

appellant must bear costs of procuring and printing evidence; discretionary with trial court to have State pay for it, 95 C 451

cost of printing testimony on appeal from refusal to set aside verdict not allowed where evidence was clearly conflicting though appellant prevailed, 98 C 584

costs are forfeited unless reasons of appeal to be pursued in argument are properly specified, 99 C 523

right of Supreme Court to award costs and damages, 103 C 732

in will reservation suit, reasonable expenses and counsel fees allowed out of that portion of estate involved in the suit, 105 C 98

in criminal case tried to court, where appeal based solely on insufficiency of evidence, costs same as on appeal from denial of motion to set aside verdict, 105 C 332

on reservation to determine rights of creditors and assignees of beneficiary to reach income of trust, costs should be paid from income, 107 C 10

none taxed for printing evidence on appeal to Supreme Court in workmen's compensation case, 109 C 737

though plaintiff prevailed, cost of printing evidence to secure correction of finding not established in any material particular, not taxed, 114 C 513

where rescript did not contain provision that prevailing party should not recover cost of printing evidence to secure correction which was denied, clerk had no option except to tax expense, 114 C 738

costs are taxable on appeal in mandamus action as in other actions, 115 C 99

allowance of costs is in discretion of court, 115 C 530

——where no reason appears why case should not have been submitted to trial court, costs taxed to defendant on reservation as though it were prevailing party, 115 C 530

when no assignments of error looking to correction of finding, printing of entire evidence unwarranted; no costs taxed to prevailing appellant for printing of this evidence, 117 C 538

where printing unnecessary evidence was due to prevailing appellee's refusal to stipulate, no costs taxed to her, 117 C 548

no costs taxed for printing evidence in appeal from refusal to set aside verdict, when new trial granted for error on appeal from judgment, 122 C 25

in reservation were taxed to prevailing party as they would be on appeal, 123 C 394

where evidence offered on motion for new trial for newly discovered evidence was improperly incorporated in new record, no allowance for printing it was included in costs to prevailing appellant, 124 C 325

§ 51. ——Arguments and Briefs

if both parties move for new trial, plaintiff opens argument, 18 C 145, 36 C 191

——so where both parties file motion in error, 36 C 191

will not hear argument on points previously heard on reservation, 26 C 117, 27 C 462, 43 C 256, 44 C 391

——or those on which party moving in error might have been heard, 44 C 391

will not hear argument if no question of law appears to have been raised and decided below, 36 C 116

——but question may appear expressly or by necessary implication, 36 C 116

precedence in hearing case applies only among cases from same county, 72 C 444

where both parties overlooked statute, court ordered reargument, 73 C 519

action where brief contains scandalous matter, 73 C 721, 75 C 302, 82 C 442

court need not consider points not argued, 77 C 528

question decided on bill of exceptions not open for reargument on appeal, 77 C 667

only one attorney on a side should make opening argument, 79 C 499

court refused to hear more than two counsel, 93 C 326

reasons of appeal not noticed by either party on briefs are disregarded, 94 C 520

will not regard reasons of appeal not mentioned on brief, 95 C 378

ground of error not referred to in pleadings, briefs or arguments will not be regarded, 97 C 308

court refused to receive brief filed only by attorney from another State, 98 C 362

only Connecticut attorneys may sign pleadings or briefs; those of other states will be permitted to argue cases, 98 C 362

assignment of error not pressed in brief or argument will not be considered, 119 C 437

claims not pursued in brief will not be considered, 124 C 665

court ordered reargument upon question whether, since Revision of 1930, industrial banks are subject to usury law, because of public importance, though question not presented in court below or pressed in argument of appeal, 125 C 315

court ordered reargument where pertinent statute was overlooked, 125 C 504

§ 52. ——Judicial Notice

court will take judicial notice of matters in realm of common observation and knowledge, 67 C 316

court bound to take judicial notice of city charter, 69 C 390, 81 C 229

law and usages of Congregationalism are subject matter of judicial notice, 73 C 719
court will take judicial notice of public statutes of another State, 81 C 152
court will take judicial notice of coincidence of days of week with those of month, 83 C 134
where there was no custom in a City Court as to appeal bonds, Supreme Court took judicial notice of custom in other courts and disregarded finding, 84 C 462
court will take judicial notice of fact appearing on its records in earlier case, 91 C 101
court took judicial notice of validating acts not set out in agreed statement of facts, 104 C 581
judicial notice taken of records and briefs in same case before court at another term, 112 C 161
judicial notice of record in another appeal arising out of same transaction and coming before court at same time, 112 C 395
Supreme Court may take judicial notice of files of Superior Court, 115 C 36
court takes judicial notice of records in former appeals in same case, 117 C 501
court takes judicial notice of terms of Superior Court fixed by the statute, 118 C 417
Supreme Court can take notice of files of Superior Court, 126 C 214, 129 C 516
court may take judicial notice of all papers forming the file of the case and use them for any proper purpose, 126 C 614
Supreme Court will not take judicial notice of public document, evidential in its nature, where matter would involve it in determination of issue of fact, 129 C 79
Supreme Court took judicial notice of fact that distance between two towns in State is considerable and that conditions affecting wages differed, 129 C 236
Supreme Court took judicial notice of method of paying state officers, 129 C 271

§ 53. Appeals from a Judge

appeal carries with it stay of execution when, 62 C 488
provision that action of judge shall be "final and conclusive" does not prevent an appeal, at least to the extent of determining whether judge exceeded his jurisdiction, 67 C 206
papers must be filed with judge and he must himself allow appeal, 68 C 418
judge must be acting in judicial capacity, 69 C 601, 76 C 257, 79 C 601
nature of acts of judge in chambers, 69 C 602, 70 C 480, 76 C 253, 88 C 142
requirement that statutes and rules to be strictly complied with applies to appeals from action of judge; time and place of court to which appeal is taken, 70 C 331
as to appeal from interlocutory rulings, 75 C 245
nature of remedy, 77 C 597
judge may extend time, 79 C 528
writ of error does not lie from decision of judge, 88 C 146
action by judge in reducing or dissolving attachment is final judgment from which appeal can be taken if question of law is involved, 92 C 682
recitals in memorandum of decision and certificate of election issued, filed by judge, is a declaration by him of his judgment, from which appeal lies, 104 C 398

§ 54. Reservations

on reservation will treat sufficiency of bill after demurrer overruled, as res adjudicata, 13 C 466
Supreme Court will not advise on questions not referred to it, 23 C 621, 35 C 510
after case reserved for advice, will not on writ of error review questions involved and decided on reservation, 26 C 110, 27 C 459, 32 C 199, 43 C 255, 44 C 376
will not decide whether garnishee is indebted in original suit; such decision is not conclusive on either party, 27 C 271
on reservation the facts, not the evidence of them, should be found, 27 C 278
will not advise whether nonsuit should be granted, 33 C 445
court declined to entertain case reserved for advice until written stipulation to accept decision of court as final, 36 C 196
what questions only will be entertained on reservation, 46 C 240
judgment not advised on reservation, if the declaration would not sustain it, 47 C 375
——if amendable, judgment contingent on amendment is usual, 47 C 376
on reservation, advice may be made contingent upon an amendment and some further finding of fact, 52 C 274
lower court cannot give Supreme Court jurisdiction merely by reserving the case for its advice, 58 C 66
Supreme Court will not consider on reservation proceedings that are not "final," 58 C 68
——but petitions for new trials may be brought up on reservation, 58 C 68
on case reserved, court advised that plaintiff be given an opportunity to amend complaint, if that course will best serve the ends of justice, 60 C 84, 63 C 545
question of power to grant motion to set aside verdict may be reserved, but not advisability of granting, 64 C 73
nature and effect of reservation, 65 C 116
issues open on reservation in quo warranto, 66 C 300
consent of parties who chose to appear in the trial court sufficient, 67 C 317

facts must be distinctly found by the trial court; cannot be inferred by Supreme Court from subordinate facts in finding, 68 C 318

no appeal lies from final decree of trial court which conforms to advice previously given by Supreme Court upon a reservation, 71 C 584

in disposing of reservation court may, on request of both parties, consider facts admitted by both parties at the hearing, though not stated in the record, 75 C 502

questions which can be considered on reservation, 77 C 214

case reserved on demurrer; stipulation by parties that advice of court should end case to be placed on record, 77 C 327, 80 C 318 (footnote)

reservation entertained where case has proceeded so far that determination by Supreme Court of questions propounded would be decisive of final judgment to be rendered in the cause, 80 C 71

Supreme Court has refused hearings on questions of law presented by demurrer to the complaint, 80 C 80

where questions enter into final determination, properly brought on reservation in advance of time when case is ready for final judgment, 80 C 646

questions not affecting parties to the action not answered, 86 C 585

if cause is ready for final judgment, stipulation need not be filed, 87 C 359

reservation for construction of will; who should be made parties, 88 C 87

questions affecting unrepresented parties not decided, 88 C 207

reservation for construction of will; incidental question of procedure not to be included, 91 C 241

reservation for construction of will; advice not given as to contingencies not in existence, 92 C 507

reservation allowable only for questions of law involving substantive rights, 95 C 160

——not allowed to include motion for correction by Superior Court of compensation commissioner's finding, 95 C 160

——will not consider wholly academic questions, 95 C 160

expenses of trustees in opposing attempt of creditor of beneficiary to reach his interest in fund, where chargeable, 95 C 216

necessary that stipulation conform to rules of court, 96 C 568

——and state question to be reviewed, 96 C 568

——if it merely asks whether on facts plaintiff can recover, court will not consider it, 96 C 568

——nor if there are questions of fact undisposed of, so that case not ready for final judgment, 96 C 568

——Superior Court cannot confer jurisdiction on Supreme Court where matter is not properly reserved, 96 C 568

advice will be confined to questions propounded, 98 C 129

——and court will not give advice as to matters in which persons not parties are interested, 98 C 129

in workmen's compensation case court passed on motion to correct finding as preliminary to reservation, 99 C 355

——in such a case Superior Court may act on motion to correct and then reserve questions of law, 102 C 511

irrelevant facts cannot be considered because incorporated in an agreed statement of facts, 103 C 565

defects in procedure may be overlooked, 107 C 9

questions going beyond facts appearing of record and likely never to arise will not be considered, 107 C 10

——where question is as to right of creditors or assignees to reach income of trust, costs should be paid from income, 107 C 10

construction of paragraph of will providing for contingency will not be made where contingency has not occurred, 111 C 683

where facts have been stipulated to, question of their admissibility not necessary or proper, 112 C 570

question of disposition of accumulated income on savings department assets in case depositors are not paid in full not necessary to determination of present rights, 115 C 364

where Superior Court advised that it might authorize receiver to borrow money, question whether it would be advisable left for consideration of that court, 115 C 530

court declined to entertain reservation where counsel for all parties agreed on question at issue, that trustee should pay certain tax; Superior Court judgment sufficient, 117 C 663

ordinarily, whether or not court will entertain reservation determined before assignment of case, 117 C 663

——but where reason for not entertaining it develops upon hearing, it may then decline to consider it, 117 C 663

where state referee did not make finding sufficient to enable trial court to enter judgment, Supreme Court declined to entertain reservation, 121 C 697

attack on statute as violation of "equal protection of law" clause not fairly within purview of questions reserved for advice and not considered, 122 C 290

questions should be so stated that each will present a definite point of law and that court may give to each a categorical or very definite answer, 124 C 82
improper where parties are not in dispute as to interpretation of will, 125 C 657
entertained as to certain subordinate questions though person interested in fund, but having no interest in the subordinate questions, was not party, 127 C 244
not function of Supreme Court to give advice as to contingencies which may never happen, where no apparent present need, 127 C 653
questions which might become academic in certain respects answered where failure to determine them would seriously interfere with settlement of an estate; and where decision gives unborn issue all rights which they could claim, 127 C 671
though court could not give advice which would determine judgment, it answered other questions which would necessarily be involved in decision of case, 128 C 218

APPEARANCE

See also JURISDICTION; PARTIES

garnishee cannot defend, or appear and prevent a continuance without express authority from defendant, K 376
authority of attorney cannot be challenged in appellate court after appearance in court below, 2 R 348
appearance and proceeding to trial on merits a waiver of omission of service, 6 C 516
if defendant out of State and attorney does not appear to defend him, suit to be continued to next term, 8 C 115
statute giving creditor right to appear in the suit where debtor's property attached does not impair any previous rights but furnishes him an additional remedy, 25 C 356
appellant by submitting to action of court without taking exception to mode in which it was constituted waived right to object, 25 C 431
where no service made on defendant, his appearance without pleading want of jurisdiction is a waiver of objection, unless court could not have had jurisdiction even if process had been regularly served, 29 C 415
appearance of party before single selectman without taking exception to want of power to act alone is waiver of objection, 32 C 108
defendant, by going to trial on merits without objection, waived objection to jurisdiction, 32 C 200
appearance at first adjournment only; bond of accused how affected, 32 C 224
appearance and plea to merits waive defect in signing writ, 34 C 181, 47 C 575, 74 C 87
respondent to petition for divorce appearing to defend against original petition waived objection to irregularity of supplemental petition, 35 C 48
appearance, pleading and going to trial before auditor without raising objection de authority waive objection, 38 C 112
where default of appearance, case may be opened on terms, 38 C 494
defendant's appearance to move case be stricken from docket waives error as to time writ returnable, 41 C 539
town *held* to have appeared, through agreement de mode of trial by its authorized town agent, 48 C 286
time and manner of defendant's appearance is all that concerns plaintiff, 51 C 393
entry of appearance on docket is not per se an appearance but evidence of it, 51 C 393
appearance in fact by defendant known to and recognized by plaintiff prevents default, though none is entered on the docket, 51 C 394
defendant's withdrawal of appearance takes with it his pleadings, and case stands as if he had filed no pleadings, 57 C 586
nonresident defendant waives failure to serve on him by appearing by counsel and pleading merits, 59 C 136
where jurisdiction is by attachment only, with no appearance and no continuance, a judgment at the first term erroneous, not void, 62 C 543
voluntary appearance waives requirement of bond for costs, 67 C 361
defects in information in quo warranto waived when respondent appears and pleads to merits, 69 C 220
general appearance not in itself waiver of defects in process, 70 C 329
voluntary appearance having been entered by defendant in action against administrator, he cannot, after trial, question regularity of proceedings, 71 C 382
special appearance by foreign receiver to dissolve attachment, 73 C 151
defendant waives right to demur to writ defective in its return by pleading to merits, 74 C 38
appearance before board of relief as waiver of notice, 75 C 590, 90 C 154
taxpayer allowed to appear in suit against town, 81 C 229
by United States attorney as amicus curiae on constitutional question, 82 C 374

lawful service not necessary if defendant appears and contests cause on merits, 83 C 243
party can appear as own attorney and witness, 85 C 209
defendant not served but who appears late can take exception to errors, 86 C 308
——does not waive right to object to earlier improper action of court, 86 C 308
acceptance of service by nonresident not same as appearance, 89 C 215
no jurisdiction of nonresident defendant not served within State, unless he voluntarily appears, 90 C 293
appearance of nonresident plaintiff by attorney is sufficient, 94 C 85
where nonresident, served by mail, appears, answers and defends, judgment properly runs against him, 96 C 266
effect of judgment of default for want of appearance, 97 C 123
——reopening or new trial on motion; remedy where improperly entered, 97 C 127
when defendant must enter, 97 C 125
special appearance necessary to question jurisdiction for matters not apparent on face of record, 97 C 127
nonresident respondents served by mail subjected themselves to court's jurisdiction in receivership proceedings by seeking affirmative relief after plea to jurisdiction overruled, 104 C 206
default admits material facts declared on and constituting cause of action and that if these do constitute cause plaintiff has right to recover at least nominal damages, 117 C 258
——if upon hearing court becomes satisfied that cause of action alleged did not exist, plaintiff entitled to only nominal damages, 117 C 259
——and new trial not ordinarily granted for failure of court to award nominal damages; certainly not, if substantial justice is done, 117 C 259
defendant seeking affirmative and distinctive relief beyond scope of issues presented on complaint after his plea is overruled voluntarily subjects himself to court's jurisdiction, 117 C 445
by general appearance, nonresident defendant submits himself to jurisdiction, 117 C 683
signing motion to erase case from docket for lack of jurisdiction as "attorney for this motion," in effect a special appearance which did not waive lack of jurisdiction, 121 C 377
no statute or rule prevents trial court, when case is regularly assigned for trial, plaintiff appears and defendant fails, from proceeding forthwith to hear case, 123 C 487
——where after proper notice defendant's attorney failed to appear, court *held* to exercise proper discretion in proceeding with case, 123 C 487
where counsel failed to appear to prosecute motion to open judgment without reasonable cause, trial court could properly refuse to open it, 123 C 487
mere entry of appearance of counsel is not enough but unless he is in attendance at all proper times to attend to the case he may be defaulted, 123 C 490
rule de appearance is one of convenience; does not preclude recognition by court of authority of an attorney who has not formally entered, 127 C 18

APPOINTMENT

See Executors and Administrators § 2; Public Officers § 3; Receivers § 2; Trusts § 15; Wills § 48

APPRAISERS

See Executors and Administrators § 3; Mortgages § 27; Receivers

APPROXIMATION

See Charities § 5

APPURTENANCES

See Deeds § 13; Easements § 10

ARBITRATION AND AWARD

§ 1. In General; Submission
2. Appointment, Powers and Duties of Arbitrators
3. Requisites and Effect of Award
4. Practice; Conduct of Hearings
5. Irregularities and Proceedings to Set Aside

See also Committees and Referees

§ 1. In General; Submission

damages for trespass to infant child, may be submitted by parent, K 217

whether under rule of court, defendant estopped to object to award, that plaintiff was not proper party to action, 2 R 429

of "accounts" includes all accounts, 2 C 433

selectmen, as such, have no power to submit claim of town to arbitration, 5 C 371

——aliter, 33 C 504

written submission not enlarged by contemporaneous parol agreement, 6 C 18

conservator may arbitrate ward's claims, 12 C 381

to be construed according to true intent of the parties, 13 C 241

parties to a suit pending may refer it to arbitrators of their own selection, 14 C 26

actual controversy not necessary in order to resort to arbitration, 17 C 351

submission by parties to suit, no discontinuance of suit, 21 C 537

collateral parol agreement not to have counsel or witnesses is binding, 25 C 70

party entering into a submission with agent, estopped to deny agent's authority, when, 29 C 575

as to damages lessee is entitled to, for relinquishing lease, 29 C 576

——no right to land involved, and submission need not be under seal, 29 C 576

of title to real estate, must follow statute requirement, 32 C 116

selectmen may submit claim against town to (overruling 5 C 367), 33 C 504

construction of, providing that costs be taxed according to law, 36 C 363

diversion of water does not involve title to land; submission under seal not required, 36 C 364

submission under seal; award not under seal; assumpsit lies on award, 36 C 365

two referees, on disagreement, to choose a third, and parties to be heard, 42 C 144

——such third person is an arbitrator only, not an umpire, 42 C 144

selectmen must act as a board in submission of question of town's liability for pauper, 54 C 38

——whether selectmen have that power is questionable, 54 C 38

agreement to submit to, invalid both at law and in equity, when its effect is to oust the court of jurisdiction, 54 C 487

agreements for submission of fire losses to, *held* binding and favored by courts, 57 C 114

amendment of agreement to submit, *held* material, 58 C 168

an attorney may submit case to arbitration, under order or direction of court, 58 C 169

submission *held* to be in pais, and not under rule or direction of court, 58 C 170

an attorney has no implied authority to submit case to, by agreement in pais, 58 C 173

——or to materially change submission without client's authority, 58 C 173

is favored, 64 C 88

power of selectmen to submit town controversies, 64 C 88

——of executors and conservators, 71 C 596

submission under rule of court; arbitrators do not thereby become officers of court, 64 C 501

submission providing that arbitrators should proceed upon principles of equity *held* not a limitation but a highly creditable grant of power, 64 C 501

under rule of court; is an "action" within statutes as to appeals, 73 C 715

informal agreement to leave matter to third party as, 74 C 418

existence and validity of claim not bound to be submitted to arbitration under terms of contract, 81 C 707

agreement to arbitrate boundary not under Statute of Frauds nor § 4050, Rev. 1902, 87 C 678

when action maintainable on original contract, 98 C 619

stipulation *held* to be one merely for estimate rather than for an award, 98 C 620

definition of submission, 108 C 478

underlying assumption upon which insurance companies acted in submitting dispute to arbitrators was that liability for loss lay somewhere between them; *held*

——that defendants cannot take position that though arbitrators found plaintiff was not liable for any part of loss they can still dispute their own liability, 118 C 49

——and submission agreement gave no support to defendants' contention that in negoti-

ations preceding it parties abandoned their original agreement for reallocation of loss, 118 C 49

§ 2. Appointment, Powers and Duties of Arbitrators

arbitrators may decide on principles just in their opinion, K 353
court's acceptance of persons chosen by parties, no "appointment," 14 C 30
——such sanction does not make arbitrator a judge, 14 C 31
arbitrators of parties' own choosing, not officers of court, 14 C 30
statutory judicial disqualifications do not affect arbitrators, 14 C 31
where several distinct acts are to be done by different arbitrators, each act is necessary to a valid award, 25 C 83
if chosen to make partition, have not power to dedicate part of land for highway, 40 C 23
duty of umpire to notify parties and allow a hearing, 42 C 145
——unless parties have otherwise agreed, 42 C 145
within province of arbitrators to determine whether certain damages claimed are proximate or remote, 64 C 501
powers in agreement to arbitrate not limited by arbitrators' procedure, 91 C 685
arbitrator may award lump sum, 91 C 685
arbitrators not bound by rules of law; may determine question in light of own special knowledge; may take notice of custom or usage of trade, 114 C 425
even where submission is by rule of court, arbitrators are not officers of the court but appointees of the parties, 114 C 431

§ 3. Requisites and Effect of Award

award not bad for blending damages of infant with damages belonging wholly to parent, K 217
mere unreasonableness of award does not vitiate it, K 353
parties as to whom award is obscure can alone take advantage of it, 1 R 149
equity rectifies mistakes in award if this can be done without setting it aside, 1 R 370
effect of award on all matters put in issue later than submission, 2 R 92
award, on submission under rule of court, on all matters in controversy, bars suit on prior claim omitted by mistake, 2 R 101
discharge of award by agreement, conclusive, though new submission be revoked by one party, 2 R 295
invalid, unless certain and final, 2 R 509
——unless mutual, 2 R 531
award obtained by fraud, conclusive until regularly set aside, 1 D 133
award to be liberally and reasonably construed, 4 D 426
conclusive on matters in submission, 2 C 433, 4 C 266
grantor of property in dispute has no rights under award after its sale to the other party, 3 C 373
award by two only, of three arbitrators, without express power, invalid, 4 C 53
action on award not maintainable for infringement of right decided by award, 5 C 174
how far void for transcending the submission, 5 C 175 (footnote)
cannot transfer title to land, 11 C 243
——may decide in whom title is, 11 C 243
——concludes party from contending title, 11 C 247
——such submission or award need not be by deed, 11 C 248
award that land "belonged to A," construed, 11 C 249
valid award cannot be repudiated by act of one party, 13 C 240
parties and privies cannot litigate same matters decided by award, 13 C 241
award that "if easement is enjoyed, party shall pay," is no defense to action for using easement, 13 C 243
need not be expressed in technical language, 17 C 352
works an estoppel only as to matters necessarily involved in submission, 20 C 97
invalid, without assent of all arbitrators unless submission otherwise provides, 21 C 535
where several distinct acts are to be done by different arbitrators, each act is necessary to a valid award, 25 C 83
seal unnecessary, unless required by submission or by statute, 29 C 575
may be good and bad, in part, where several distinct matters are submitted, 32 C 116
damages presumed to have been given for trespass merely, when, 32 C 117
award of money to be paid, means paid on demand unless contrary appears, 32 C 117
award silent as to time for its execution, fails to follow submission fixing a time, 44 C 483
——such award is void, 44 C 484
legal judgment founded on award, not conclusive as to proper conduct of arbitrators, 47 C 37
wife not affected by award de boundary of her land, where husband submitted question without her knowledge, 53 C 497
——award inadmissible against her in suit de boundary, 53 C 498
legatees not parties to, are not bound though executors of deceased were parties, 59 C 162
——award in such case inadmissible in suits against executors and legatees, 59 C 162

boundary line conclusively fixed if left to arbitration, 87 C 678
expenses and counsel fee as damages for refusal to abide by award, 87 C 678
an insurance case award is a bar unless set aside, 100 C 240
——if plaintiff suing on policy fails in this regard errors as to other issues are disregarded, 100 C 240
when majority action of group of persons designated to render a decision is final, 107 C 272
award may be made in one or more writings or orally or partly oral and partly written, 108 C 478
——it must be operated in manner intended by arbitrators and be enforced, if at all, in its entirety, 108 C 478
——where arbitrators awarded damages to one partner, with understanding he would go out of business, and informed other partner but not him, he cannot recover damages in disregard of condition, 108 C 478
——defense was equitable, admissible under general denial or special defense setting up that plaintiff had refused to agree not to compete, 108 C 478
——definition of submission to arbitration and scope of issues, 108 C 481
architect changed method of flashing windows; award finding no substantial departure from contract *held* not erroneous, 114 C 425
award cannot be repudiated by mere act of one of the parties, 115 C 484
——it is a judgment and where money is awarded to one party, only payment or discharge can relieve him, 115 C 484
——bringing of suit by person entitled to money against other party to award subsequent to it is not a repudiation of it, 115 C 484
——former cannot claim that latter had no right to convey property involved until opportunity was given to levy upon it, 115 C 484

§ 4. Practice; Conduct of Hearings

declaration on award showing that arbitrators mistook the law, demurrable, 1 R 213
replication to plea of "no award" must set out award and breach, 1 R 356
bond on submission, construed to be bond to abide award, 1 R 412
award made res inter alios acta, inadmissible, 2 D 111
costs of pending suits follow award; party wrongfully revoking submission liable for costs in both cases, 3 D 125
arbitration note indorsed down to amount of award, how declared on, 10 C 135
action on award, submitted by conservator as such, to be in ward's name, 12 C 383
whether a rehearing may be had before umpire, quaere, 17 C 314
arbitrators may testify that submission is not in its original form, 20 C 97
equity will enforce award providing specific remedy, 24 C 114
——where fraudulent combination seeks to render specific award inoperative, 24 C 114
amount awarded lessee for relinquishing lease, not affected by his continuance on premises, 29 C 576
mixed award is no defense to action on money part of award, 36 C 364
action by arbitrators for fees and expenses; common counts and special count on award, 38 C 272
——whether action maintainable on special count, quaere, 38 C 272
arbitrators may award fees payable to themselves jointly and severally, 38 C 273
petition to enjoin collection of judgment based on award, for improper conduct of arbitrators, 47 C 37
——judgment not conclusive; parol evidence admissible, 47 C 37
arbitrators not bound to follow strict rules of law unless it is a condition of submission, 57 C 117
arbitrators elected as experts may be justified in refusing to hear any evidence, 57 C 117
methods of arbitrators in reaching conclusion are not proper subjects of inquiry, 57 C 118
parol evidence admissible to show special meaning of term in contract, 64 C 501
arbitrators not required to make finding of facts, 64 C 501

§ 5. Irregularities and Proceedings to Set Aside

not set aside for newly discovered evidence, K 358
——aliter, where suppressed by adverse party, K 358
court will not set aside award that writing is libelous, 1 R 198
——though it be doubtful whether it were so, 1 R 198
equity relieves against fraud defeating benefit of award, 1 R 361
grounds on which equity will set aside award, 2 R 428, 490, 1 C 571
——grounds on which equity refuses to set it aside, 1 C 571
remedy at law is adequate for corruption or partiality of arbitrators, 2 R 490
——or for mistakes in award, 2 R 490
for what causes only can award be set aside, if within the submission, 7 C 542
failure to notify parties of choice of umpire is insufficient cause, when, 17 C 317
irregular conduct of arbitrators, if not corrupt, is embraced in agreement to waive any informalities, 47 C 38

various acts held insufficient to warrant inference of corrupt action, 47 C 38
excessive damages must be so great as to raise inference of corrupt action, 47 C 42
on submission by "A as agent of owners of vessel B," owners should petition in own name to set aside award, 47 C 389
——that submission was under seal makes no difference, 47 C 389
where arbitrators act in good faith neither party can avoid award because of error of judgment, 57 C 117
where one of two arbitrators in absence of parties and colleague inquired de certain facts for his own information, it does not vitiate award, 57 C 117
——unless parties were prejudiced or decision affected thereby, 57 C 117
power to accept award, given by statute, implies power to reject, 64 C 501
arbitrators cannot be held to have acted improperly because of omission of some detail in the award, 64 C 501
when award within the submission, etc., it will not be set aside except for partiality, corruption, mistake or fraud, 64 C 501
party seeking to impeach award on submission under rule of court, should do so by way of remonstrance against its acceptance, 64 C 501
harmless misconduct of arbitrators cannot upset award, 91 C 685
award set aside only for partiality, corruption or mistake, 91 C 685
irregularity of appraisers harmless if no injustice done, 92 C 31
effect of failure to agree on umpire or of lack of award, 98 C 619
defense of bad faith or failure to act must be specially pleaded, 98 C 625
statement of arbitrators out of court as to conduct is inadmissible to show misconduct, 100 C 240
——they may be called and examined directly, 100 C 240
suit to set aside award for misconduct is a suit in equity, 100 C 250
——should be tried to court, unless otherwise ordered, 100 C 250
——however, misconduct is a defense, either in law or equity, to action on award, 100 C 250
prior to statute of 1929, an award could be set aside only for corruption, mistake in principles, or fraud, 114 C 425

ARCHITECTS

See also CONTRACTS § 24

if merely supervising a builder under written contract, has no power to order extras, 48 C 104
contract to furnish plans and superintend erection is personal, entire and indivisible, 98 C 185
——duty of owner as to facts known to him, 98 C 185
——right of owner to withdraw on making compensation, 98 C 185
——fraudulent representations by owner as to abandonment of plans *held* to vitiate settlement with A, 98 C 185
——recovery where owner secretly used plans, 98 C 185
——damages, 98 C 185
recovery for partial performance under mechanic's lien for whole fee, 100 C 339
effect of ceasing services before building completed by mutual agreement where fee was for percentage of cost of whole building, 100 C 339
is entitled to mechanic's lien if plans are actually used, but only for amount actually due him at time of lien, 100 C 341
whether architect's fee is part of contract for building in ascertaining whether contract is in excess of $25,000, 102 C 218
where defendant repudiated contract by which she engaged architects in connection with remodeling house, latter were entitled to recover at least the reasonable value of their services, 116 C 688

ARMY

See MILITARY

ARREST

See also WARRANT

sheriff is not liable to arrest on mesne process, K 48
whether inner door may be broken to effect arrest on civil process, quære, K 383
without warrant, to prevent breach of peace or escape, proper, 1 R 67
officer may break open door, though person is not in the house, if officer had good reason to suppose he was, 1 R 84

officer may break open door to make arrest, when, 1 R 134
any person may arrest thief without warrant, 2 R 171
effect of acceptance of plea after arrest and commitment for want of bail, in civil suit, 2 D 199
United States marshal liable to arrest on civil process, 2 D 300, 304
elector's privilege, how far a protection from arrest, 3 C 542
——silence of elector at arrest no waiver of privilege, 3 C 542
officer's return on warrant prima facie evidence of arrest as against both grand juror and officer, 11 C 99
person making arrest may use all reasonable and necessary means, 11 C 459
avoidance of arrest does not invalidate defense that acts complained of were done in making, 11 C 459
whether authorized by search warrant, quære, 12 C 225
duty of officer after arresting debtor on mesne process, 25 C 508
debtor decoyed into this State and arrested by creditor will be released on habeas corpus, 32 C 588
on view, or speedy information, without warrant, 37 C 35
——unless so made, a void warrant is no justification, 37 C 36
refusal to pay execution or turn out property justifies levy on body, 37 C 84
officer making arrest presumed to do his entire duty, 51 C 434
——presumed to have presented offender before proper court or magistrate, 51 C 434
officer neglecting to return warrant of arrest is a trespasser ab initio, but one assisting officer at his request is not thereby a trespasser, 56 C 322
attorney who draws up void mittimus liable for arrest thereunder, 64 C 320
arrest of body under complaint claiming conversion will not prevent later claim on basis of breach of contract, 68 C 459
statute limits right of peace officer to arrest without warrant, 84 C 164
statute implies an offender, not an offense already committed, 84 C 165
when an arrest is warranted and justified, 84 C 378
a civil restraint as well as a criminal one is an arrest, 85 C 327
peaceful submission to arrest is still a restraint of liberty, 85 C 327
one wrongfully brought into a town not subject to arrest by constable, 85 C 327
an indifferent person may not arrest on bastardy complaint, 85 C 327
owner or any other may retake goods and tender thief to justice, 97 C 133
arrest without warrant by private individual, 97 C 138
duty of police to seize law-breaking implements or articles as evidence, 97 C 543
police officer arresting for offense within his own observation acts at his peril, and is liable if cause does not actually exist, 97 C 700
——right to arrest on speedy information of others, 97 C 701
without warrant, justifiable when, 101 C 224
where officer finds man drinking at bar and surroundings justify belief that crime was about to be committed he may arrest without warrant man apparently proprietor, 101 C 225
without warrant, by surety of principal in bail bond, 102 C 16
officer must carry out commands of process literally, unless prevented by emergency, 105 C 177
officer using excessive force and oppression or taking person arrested or detaining him in place not directed or permitting process to be used to extort money is guilty of abuse of process, 105 C 178
warrant for arrest issued in another State of no effect here, 105 C 374
officer may use no more force than reasonably necessary, 105 C 528
at common law peace officer could arrest without a warrant one whom he had reasonable ground to believe had committed a felony, without requirement of speedy information, 115 C 279
——our statute has changed this rule and applies equally to misdemeanors and felonies, 115 C 279
——arrest otherwise than in accordance with statute is illegal, 115 C 279
charge to jury that defendant had no right to arrest plaintiff's intestate for adultery without warrant unless he had speedy information of crime sustained, 115 C 279
statutory conditions governing arrest of fugitives from justice from another State must be strictly complied with, 115 C 638
officer cannot arrest fugitive from justice without warrant though at request of officers of demanding State, 115 C 638
in general, arrest without warrant is illegal except as authorized by statute, 115 C 638
arrest of accused for crime committed in Chicago made without any of the preliminary steps or the warrant required by our statutes *held* illegal, 115 C 638
——and accused might properly make resistance under certain circumstances and to certain extent, 115 C 638

ARREST OF JUDGMENT

See JUDGMENTS § 22

ARSON

school is dwelling house within statute, 2 R 516

——is not an outhouse, 10 C 144

barn separated from dwelling by highway not a parcel of it, 6 C 48

building burned must be averred and proved the property of another, 12 C 489

building designed for but not used as a dwelling not a subject of, 20 C 247

whether building is a subject of, question for jury under instructions, 20 C 247

house burned to be described as house of occupant, regardless of legal title, 29 C 344, 63 C 331

charge of burning with intent to defraud insurance company; State need not prove legal corporate existence of company, 45 C 280

——proof of its de facto existence and business life sufficient, 45 C 280

intent to defraud insurance company inferable from circumstances, 45 C 283

essential ingredients of the crime, 63 C 331

——voluntary and malicious burning of an occupied dwelling house of one other than accused, 63 C 331

law regards occupier as the owner, 63 C 331

an information for arson should state name of occupier, or make other averments showing that house was owned by another than accused, 63 C 331

——omission of such averment fatal, not cured by verdict, 63 C 331

verdict that accused were guilty *held* justified by evidence, 105 C 115

proofs of loss from fire alleged to be set by connivance of owner of building are admissible though made after fire, 105 C 116

evidence *held* to establish guilt beyond reasonable doubt, 105 C 326

malice may be express or implied, 107 C 630

——sufficient if act done deliberately without justification or excuse, 107 C 630

building is burned if any part is actually charred, 107 C 630

unlawful burning of another's barn; evidence *held* to warrant conviction, 109 C 29

evidence *held* to sustain charge of statutory arson, 109 C 394

——failure to note change in law by amendment from "intent to defraud" to "intent to defraud, injure or prejudice" nil sig. where whole issue was an intent to defraud, 109 C 394

——accused may be guilty where purpose was to secure insurance, although he did not own building, if he aided and abetted, 109 C 394

——connection of accused with another fire admissible in evidence where scheme included taking goods in that building and putting them in building burned, 109 C 394

——so purchase of merchandise for factory in building and attempt to recover further insurance, 109 C 394

——conferences between accused and principal six months before not too remote, 109 C 394

question whether witness "did not understand" he was employed by insurance company back of prosecution not in itself improper, but his understanding would not show fact, 109 C 395

causing death by burning building, 110 C 55

questions and answers stricken out, referring to accused's connection with other fires in course of long trial for murder and arson, not ground for mistrial, 110 C 55

for purpose of defrauding insurance company, 121 C 704

——conviction of accused sustained where apparently he was only person having access to unoccupied house with nothing to indicate motive on anyone else's part, 121 C 704

ASSAULT AND BATTERY

forthwith process on complaint of private person for, illegal, 1 R 200

in action for, the general character of parties not in issue, 1 R 312

plaintiff may prove, by defendant's confession on criminal charge, 1 R 528

proof of provocation by words confined to words at time of assault, 2 R 252

State must be joined in qui tam action for secret assault, 6 C 307

battery in defense of goods justifiable if not vindictive, 6 C 457

evidence in mitigation of damages confined to time and place of assault, 10 C 459

one or both jointly charged with, may be found guilty, 18 C 207

——evidence of two distinct assaults by different defendants inadmissible, 18 C 205

——otherwise, when both assaults are part of common design, 18 C 205

evidence of plaintiff's legal title to house where act took place, inadmissible, 18 C 209
testimony admissible in action by woman for assault upon her person, 20 C 327
right to use force in maintaining position in funeral line, 26 C 589
plaintiff may prove previous threats of defendant, in civil action for, 31 C 160
if malicious and premeditated, exemplary damages may be given, 31 C 162
defendant may prove in mitigation of damages a charge of crime by plaintiff just previous to, 31 C 163
——evidence as to truth or falsity of such charge, inadmissible, 31 C 163
to constitute trespass vi et armis, injury need not have been intentional; sufficient if direct result of force exerted by defendant negligently, 36 C 182
member of school district committee may forcibly remove scholar, when, 41 C 446
——such removal is not an expulsion, 41 C 447
plaintiff's unfriendliness, if recent, admissible to show provocation and reduce damages, 42 C 208
facts pleaded in justification of, may be used to reduce damages, 45 C 245
officer liable for, in serving process, when, 49 C 67
infliction of reasonable corporal punishment by school teacher is not an, 53 C 483
——what is reasonable punishment is a question of fact, 53 C 482
by officer of company to protect papers of company against improper use by directors, *held* justifiable, 58 C 444
plaintiff entitled to damages ordinarily and naturally resulting from, 60 C 57
all separate acts of violence in a continuous assault need not be alleged, 60 C 59
——all circumstances attending are admissible to enhance damages, although complaint demands general damages only, 60 C 62
special damages must be averred in order to recover them, 60 C 61
"by beating with a cane"; evidence of pushing plaintiff against a car, admissible, 60 C 62
——if part of the one assault alleged and testified to, 60 C 62
action to recover damages for indecent, felonious assault, 74 C 50
complaint may state surrounding circumstances; insult as enhancing damages; general statement of ill treatment in pleadings; burden of proof on issue of justification, 77 C 600
exemplary damages given for malicious assault in public, 83 C 200
jury can consider disparity in size of parties, 83 C 208
when justified by discharge of plaintiff and failure to leave premises, 83 C 211
on pleadings defendant had burden to prove no more force used than necessary, 83 C 466
only necessary force to be used to prevent lodger from removing goods, 86 C 264
when assault can be considered single or joint, 86 C 264
conspiracy to commit, is a high crime, 86 C 434
attack on a house to injure owner is assault on his person within law of self-defense, 88 C 360
where father and son attack, all damages cannot be assessed against father alone, 89 C 237
evidence justified verdict for joint assault by husband and wife, 92 C 93
not justified if officer did not disclose authority because not asked, 92 C 93
if two counts, one penalty can be imposed appropriate to conviction on either, 95 C 140
evidence showing one assaulted mistaken for another, received, 95 C 140
exemplary damages; what evidence considered in mitigation of, 96 C 693
——if not awarded, nothing to mitigate compensatory damages allowable, 96 C 693
provocation may mitigate exemplary, not compensatory damages, 96 C 693
exemplary damages can only be awarded where pleadings support them, 96 C 693
——when they will be awarded, 96 C 694, 97 C 139
resistance to one assisting employer to arrest a thief and attempt to recover stolen property as assault, 97 C 133
exemplary damages; not usual or necessary to offer evidence as to amount, but not improper, 97 C 133
use of excessive force to resist attempted arrest, 97 C 139
teacher not liable for punishing pupil who assaulted other pupils while returning from school, though assault occurred after he reached his own home, 102 C 130
——fact that pupil's mother directed the assault of no consequence, 102 C 130
master's liability to third persons for assault and battery committed by servant, 102 C 696
proper self-defense against battery not a battery, 105 C 342
owner of goods may enter another's land where his goods wrongfully taken and detained; and may take reasonable measures for self-protection, 105 C 342
when unintentional or accidental trespass is assault and battery, 105 C 528
when assault and battery is wilful and malicious; when wanton, 105 C 528
liability of police officer who uses more than reasonably necessary force, 105 C 528
exemplary damages for assault and battery, 105 C 528
circumstances before and after occurrence, in-

cluding defendant's declarations, admissible to prove character of assault, 105 C 528
police officer may not give opinion as to whether he used more force than necessary in making arrest, 105 C 528
intent of defendant is a fact; he may testify as to it, 105 C 528
failure to charge that verdict of simple or aggravated assault possible, *held* harmless where verdict of robbery by violence returned, 105 C 757
allegation that assault occurred on certain date supports proof that it was on or about that date, 106 C 506
if only evidence as to assault is of certain date, charge that verdict must be based on that date *held* proper, 106 C 506
nominal damages proper where injury trivial and no provocation justifying exemplary damages, 107 C 122
justification; amount of force used *held* not excessive or unreasonable, 112 C 436
conspiracy to injure and assault *held* established by facts, 114 C 567
right of party assaulted in his dwelling house to resist, 115 C 639
proof of provocation allowed in certain circumstances in mitigation of damages, but mitigation goes only to exemplary not compensatory damages, 116 C 549
——assault must be shown as result of sudden impulse or passion, 116 C 549
——provocation must be shown so recent that passions and impulses created have not had time to cool, 116 C 549
——acts and words of plaintiff which did not come to defendant's knowledge immaterial, 116 C 549
——question asked plaintiff if he had been away with plaintiff's wife and of wife if plaintiff had slapped her, properly excluded where it did not appear these matters came to defendant's attention, 116 C 549
words or actions admissible restricted to those immediately connected with assault, 116 C 549
——question asked defendant as to what information wife had imparted to him prior to his going to place of assault properly excluded, 116 C 549
removal of moles from face without consent is a trespass entitling plaintiff to at least nominal damages, 119 C 492
——also such special damages as are alleged and proven to have proximately resulted, 119 C 492
——charge restricting damages to such as proximately resulted from operation without improper act of plaintiff materially contributing thereto, upheld as sufficient, 119 C 492
liability of private person or corporation for acts of special police officers, paid for by it, 125 C 705

ASSAULT WITH INTENT TO KILL, MURDER, MAIM, RAPE

battery with intent to kill is a high crime and misdemeanor by common law of Connecticut, 3 C 112, 5 C 330
proof of rape will sustain an indictment for attempt to commit rape, 7 C 54, 19 C 392
attempt to commit rape; evidence of good character of complainant for truth *held* admissible, 8 C 100
——confirmatory evidence to show constancy in accusation admissible, 8 C 100
malice is a mere matter of aggravation in assault with intent to kill, 8 C 498
——jury may find accused guilty of assault with intent to kill on charge of assault with intent to murder, 8 C 498
——"with actual violence" supplied by equivalent words, 8 C 499
under statute any language which charges accused with exercise of physical force with intent to commit rape upon person assaulted is sufficient, 31 C 210
assault raising reasonable belief of an intent to kill justifies the killing of assailant, 32 C 83
——question of reasonable belief for the jury, 32 C 83
state's attorney may bring information for assault with intent to murder under one statute, though another statute allows a sentence which may cover life, 60 C 94
statutes taken together are not in conflict with Art I, § 9, Constitution of Connecticut, 60 C 94
accused may be convicted of attempt to commit rape upon information charging rape, 70 C 104
evidence of intent given by accused, 71 C 231
intent a vital element of assault with intent to murder; insanity rebuts, 84 C 81
attempt to commit rape; not entitled to instruction that accusation of rape is easy to make but hard to prove, 84 C 223
accused's reputation for chastity can be considered, 84 C 223
defendant's belief of complainant's unchastity and habits of intoxication are immaterial, 84 C 223
assault with intent to murder must be made with malice aforethought, 84 C 471
charge de what constitutes malice aforethought, 84 C 471
justifiable and excusable homicide defined, 84 C 471
effects of good character on question of guilt, 84 C 471

statements of ill will by accused, 84 C 471
minimum sentence, 84 C 471
conviction for assault with intent to kill under charge of intent to murder, 90 C 381
intent necessary element in assault with intent to rape, 92 C 47
razor may be "dangerous or deadly weapon" from its adapted use, 95 C 145
essentials of assault with intent to commit murder; intent; malice aforethought, 106 C 345
charge of assault with intent to murder includes assault with intent to kill, 106 C 345
——former requires proof of malice aforethought but latter does not, 106 C 345
——fact that one desists may bear on intent but not on malice aforethought, 106 C 345
——sawed-off billiard cues as deadly weapons, 106 C 345
——weapons found in car used by accused admissible, 106 C 345
——premeditation not necessarily to be proved on charge of assault with intent to murder because not necessary to second degree murder, 106 C 352
assault with intent to commit rape is an infamous crime in violation of conjugal duty and punishable by imprisonment in state's prison, within meaning of statute making commission of such crime ground for divorce, 128 C 128

ASSESSMENTS

See Eminent Domain § 10; Taxation § 8

ASSIGNMENT

§ 1. In General; What Assignable
2. Validity; Notice
3. Operation and Effect
4. Actions; Pleading; Practice

See also Assignment for Benefit of Creditors; Bills and Notes; Insurance § 3; Landlord and Tenant § 19; Mortgages § 16

§ 1. In General; What Assignable

right of entry for condition broken, not assignable, 31 C 478, 54 C 62
of future earnings on subsisting contract, is valid, 39 C 27
future earnings assignable, though contract of employment be an implied one to work in ordinary course of employment for indefinite time, 39 C 537
of future earnings; if legally made in good faith, assignee holds as against attaching creditors, 45 C 563
of future earnings; after change in firm the new firm cannot hold the earnings accrued as against attaching creditor, though firm name be not changed, 46 C 325
——and though debtor and new firm verbally agree to continue the order, 46 C 325
parties lived in New York; insurance policy in Connecticut company; assignment in New Jersey; *held* New York laws do not apply, 52 C 592
right to enter for condition broken is not assignable at common law but such interest is now assignable by statute, 54 C 62
an unrestricted life policy is assignable like any other chose in action for a valuable consideration, provided it does not cover a wagering contract, 56 C 132
New York assignment *held* one at common law, 58 C 324
an insolvent has the right to transfer life insurance policy to his wife if not fraudulent or prejudicial to creditors, 61 C 248
interest of heirs apparent assignable, 64 C 153
assignment of right to make calls on stockholders, 73 C 379
gift of negotiable note and mortgage by assignment, 74 C 224
assignment of proceeds of note not assignment of note, 74 C 317
gift of life insurance policy by assignment; by what law governed; only intent disclosed by assignment is regarded, 74 C 463
debt evidenced by writing may be assigned without delivery of writing, 74 C 463
statute as to assignment of future "earnings" construed, 76 C 477
in case of a trust to pay over the proceeds cestui has assignable interest; assignment to trustee, 77 C 214
estoppel to claim assignment by permitting assignor to collect claims assigned, 78 C 211, 79 C 195
whether assignee of claims as collateral is bona fide purchaser, 78 C 211, 495, 679, 79 C 208
agreement with attorney to take pay out of judgment recovered not an assignment, 78 C 658
assignor of accounts as collateral not negligent in not seeking to enforce them until claim they secure is due, 79 C 195

assignment of note by wife may be ratified after husband's death, 81 C 415
where water rights could not be assigned, 82 C 95
written assignment of future wages, invalid on face, not "mortgage" within usury statute, 82 C 232
formal assignment unnecessary for insurance company to enforce subrogation, 83 C 691
mortgage by heir before distribution can be assigned, 84 C 208
assignment of claim resting on judgment better than one before judgment, 85 C 260
order on third person not an assignment: depends on intent, 86 C 511
promise to pay debt of another assignable, before and after breach, 87 C 49
bank is assignee if it purchases draft and bill of lading, 88 C 415
note overdue may be assigned in good faith though not in due course, 88 C 720
assignee neglecting to perfect his rights loses them, 93 C 130
beneficiary of trust estate may assign interest, 93 C 409
one paying a mortgage note that a grantee assumed to pay, entitled to assignment of debt and mortgage, 95 C 585
——not if he is owner of equity of redemption and in possession, 95 C 585
assignment of all rights under conditional sale and in property leaves nothing for further assignment, 98 C 212
——such an assignment may be by parol unless statute requires writing, 98 C 216
subscription rights to stock are assignable, 101 C 291
second assignment of mortgage and note *held* a new transaction and not merely continuation of first, 104 C 696
payment by insurer under "standard" or "union" mortgage clause works pro tanto assignment of mortgage to him, 108 C 588
interest in nature of contingent remainder not assignable at common law, 110 C 269
facts *held* to constitute equitable assignment of right to require transfer of equity of redemption, 111 C 504
draft or check does not operate as assignment of fund on which it is drawn, 115 C 1
beneficiary of spendthrift trust might have power to assign right to unused income vested in him, such assignment to be effective at his death, (dis.) 119 C 144
restrictive covenant with employee is valuable asset of business and upon sale of it benefits of covenant may be assigned to purchaser, 126 C 515
——where proprietor sells it in its entirety, in equity seller will be deemed to have assigned so much of benefit of contract as is severable and necessary for protection of business sold, 126 C 515
whether or not plaintiff grantee of lot was equitable assignee of any claim of grantor for money damages by reason of his building on adjoining lot by mistake, quaere, 129 C 20

§ 2. Validity; Notice

notice of assignment to debtor on book, indispensable to perfect, 3 D 377
assignee, after notice of assignment, may bring suit at law against assignor, or against debtor, if defeated by action of either in collection of original demand, 3 C 82
invalid, if only specification of property was a reference to nonexisting schedule, 3 C 277
of stock; invalid unless made in manner prescribed by the company, 3 C 550, 6 C 557
——assignment indorsed, "Received for record," not equivalent to record, 3 C 551
reasonable notice to debtor required, to hold debt against creditors and purchasers, 10 C 446, 14 C 144, 20 C 400
——good as between the parties without such notice, 10 C 447
——purchaser having notice, not a bona fide holder of note, 10 C 447
discharge of assignor after notice *held* no defense in ejectment, 13 C 569
failure to notify debtor of assignment may give him additional equities in way of setoff, 20 C 79
after notice to debtor of assignment, he cannot pay debt to assignor, 23 C 493
——debt not subject to attachment by creditors of assignor, 23 C 493
delivery of certificate of stock with intention to vest right of property in donee is good as, 50 C 490
——especially if accompanied by a declaration of trust, 50 C 490
——not invalid as against Statute of Frauds, 50 C 490
of insurance policy by wife to husband in blank to be used as collateral for a loan, 52 C 590
——*held* wife cannot deny power of husband to fill up assignment, 52 C 590
——but where husband, without knowledge of wife, assigned policy in part to secure pre-existing debt, *held* wife not bound, 52 C 594
mere loan of chose in action insufficient to constitute holder a bona fide owner, 55 C 125
what sufficient notice of, 55 C 249
——order to pay, when sufficient notice, 55 C 250
an assignment valid in another State is valid here, 56 C 182
——residents of another State bringing action

on, acquire no rights which they would not have had in their own State, 56 C 183
of life policy, otherwise valid, is not illegal from lack of insurable interest in assignee, 63 C 469
where rights under contract are assigned, notice necessary to affect promisor, 72 C 383
assignment merely to confer jurisdiction not bona fide, 72 C 701, 77 C 457, 78 C 495
——nor where made to effect a purpose against public policy, 77 C 457
ownership is bona fide, though part of claim is to be paid assignor, 75 C 675, 76 C 229
assignment of accounts as collateral; notice to debtors, 78 C 679, 79 C 206
assignment was ineffectual because conditions precedent not performed, 85 C 429
B agrees to pay A's debts; after breach A assigns to C, who agrees to use money to pay expenses and other debts of A; C is a bona fide assignee, 87 C 50
notice to debtors in instalment contracts of their pledge, how far necessary; notice after knowledge of pledgor's insolvency but before bankruptcy, 93 C 129
assignment of future contingent interest valid in equity, 94 C 36
subscription rights are assignable, transfer being effective as novation when accepted by corporation, 101 C 291
——acceptance by recognition and acquiescence; no formal vote necessary, nor assent of all other subscribers, nor compliance with by-laws de transfer of stock certificate, 101 C 291
assignment not good against bona fide purchasers and creditors unless notice given within a reasonable time, 103 C 341
——parol assignment of insurance policy prevailed over subsequent attachment, 103 C 341
deposit may be assigned otherwise than by giving check; where bank is duly notified of valid assignment it is bound, 117 C 279
——assignee not affected by defenses arising after the assignment and notice, 117 C 281
requirement of notice of assignment of debt imports notice by person entitled to give it to person entitled to receive it, 121 C 36
——not sufficient to show merely that assignee was diligent and sent notices promptly, 121 C 36
——nor that notice was given by regular course of mail, 121 C 40
——debtor must have had notice in fact, 121 C 36
——so where wife of president of company received letter from messenger and telephone message containing notice of assignment of judgment against company, but no proof that anyone authorized received notice, *held* it was not proved, 121 C 36
——necessity of notice in reasonable time, 121 C 39
——but as between assignor and assignee the assignment was valid, vesting beneficial intrest in latter and bare legal title in former, 121 C 36
——creditor of assignor who was not misled by apparent ownership could not garnishee beneficial interest, 121 C 36
in absence of fraud, and when creditors are not prejudiced, man may transfer personal property to wife, 121 C 41
of conditional bill of sale and note by agent purporting to act for one not owner but who was acting for real owner was effective, 122 C 33
under acts of Congress assignment made simply for purpose of creating diversity of citizenship will not afford basis of removal from state to federal courts, 122 C 583
——but assignment made to avoid such a diversity will be effective to prevent removal, 122 C 583
——right of removal not absolute but is qualified and subject to defeat, 122 C 583
no mistake in assignment of mortgage and note to justify setting it aside, 128 C 131

§ 3. Operation and Effect

money due on note assigned becomes property of assignee, 1 R 63
a debt after assignment is property of assignee and not liable to creditors of assignor, 1 R 156
obligation is subject to equities in hands of assignee, 1 R 350, 49 C 99
of judgment to attorney, prevents set-off of adverse judgment, 5 D 165
if containing declaration of trust, may operate to create trust, though invalid as assignment, 3 C 277
assignment of promissory note not payable to order transfers equitable title recognized in court of law or equity, 7 C 399, 11 C 350
rights of assignee of promissory note, 9 C 552
of chose in action; after notice, the debt is not attachable as debtor's property, 9 C 552
——action lies against promisor of note for taking, and promisee for giving, a discharge, when, 9 C 552
of promissory note carries with it the debt, 14 C 130
promissory note given to feme sole; discharge by wife after divorce does not affect suit by husband's assignee in name of husband and wife, 22 C 66
——fact husband contemplated divorce did not deprive him of power to assign, 22 C 66
assignee of nonnegotiable bond takes subject to all equities, 49 C 99

——rule without exception, where no fraud or gross negligence of obligor, 49 C 99
——assignee not affected by transaction fraudulent as to third parties, 49 C 99
assignor retaining legal title becomes trustee for assignee, 50 C 489
of note; *held* intention of parties that guaranty should pass as well, 59 C 452
——no specific assignment of guaranty is necessary, 59 C 454
of savings bank pass book, gives assignee only the rights of an assignor, though accompanied with written order of assignor, 60 C 308
an assignment of life policies in order to sue on all at once, *held* to convey full beneficial interest and not mere right to sue, 61 C 259
assignee stands in the shoes of his assignor, 64 C 544, 70 C 277, 79 C 575, 82 C 152
effect of filing assignment of judgment in foreign court, 73 C 587
assignment of debt secured by lien or mortgage passes security, 80 C 400
assignee of mortgage note has equitable title to property, 81 C 415
garnishment no excuse for nonpayment to assignee, 82 C 175
whether assignee of unsatisfied judgment can have execution in his own name, quaere, 82 C 209
rights under assignment not enlarged by foreclosure, 85 C 430
assignee subject to all equities between vendor and vendee, 88 C 415
assignee of vendor takes subject to vendee's right to examine and return goods, 88 C 415
assignee with knowledge of an agreement is bound by its terms, 88 C 442
assignee of mortgage can foreclose apparent record title, 91 C 579
plaintiff who assigns note no longer owner of it, 93 C 491
of debt carries with it the collateral, 94 C 211
where payment of mortgage is secured by another, assignment of first carries with it the security mortgage, 100 C 668
assignment of mortgage note carries the mortgage, 100 C 677
assignor in good faith of subscription in solvent corporation not liable to subsequent creditors of corporation even though assignee financially irresponsible, 101 C 291
——this rule not altered by statute, 101 C 291
of rents; agreement construed, 101 C 470
assignee obtains all security and rights of enforcement of assignor, 102 C 425
parol assignment of life insurance, with delivery of policy, vests in assignee an equitable interest; and where assignee also pays premium, trust relation arises, 103 C 341
payments to mortgagee are not binding upon assignee under duly recorded assignment, 104 C 696
where it had been adjudicated that B had no lien on certain premises, his assignee was estopped to claim any, 108 C 173
assignment of conditional bill of sale passes title to property, 112 C 617
——assignor has no further right which he can convey, 112 C 617
where K agreed with T to divide profits of enterprises outside their business and T assigned all his rights in development in which K had an interest, effect was to transfer T's interest in profits from development, 113 C 449
——money paid T was purchase price of chose in action and became his absolutely, 113 C 449
——assignee had no claim on corporation organized to take over development on stock of corporation, 113 C 449
——but it did have claim against K's estate on ground that organization of corporation prevented the performance of his agreement, 113 C 449
assignee has right to enforce mortgage even if assignment was made without consideration, 114 C 200
analogy between superintendent of banks who has taken possession of bank and receiver, 119 C 83
——former is just as much a quasi or statutory assignee of right to enforce obligations as is receiver, 119 C 83
——and receiver being vested with right of action on behalf of creditors to enforce liability against stockholders of bank, to deny him right to sue in courts of another State would be denial of full faith and credit clause in Constitution, 119 C 83
second mortgagee subjects itself to rights of holder of first mortgage and former's assignee stands in no better situation, 119 C 454
assignments of rents due or thereafter accruing carries all rent payable in the future, 120 C 265
where assignment of payments due contractor from town was accepted by latter, assignee entitled thereto in absence of proof of other claims of equal or greater priority, 120 C 274
——acceptance fixed rights of assignee as of that date, 120 C 274
——and in absence of conflicting claims, no basis for interpleader action, 120 C 274
——and he could sue in own name without joining contractor, 120 C 274
——while town might have taken steps to have contractor joined, by going to trial

without objection it waived any defect, 120 C 274
rights of beneficiary in life insurance policy which has been assigned as collateral security for loan, 120 C 306
quitclaim of property to first mortgagee operated as assignment to it of lease and carried with it right to rent subsequently accruing, 120 C 573
as between indebtedness and mortgage securing it, indebtedness is principal thing and security incidental, 121 C 263
——assignment of debt carries with it benefit of security, though not assigned, 121 C 263
——assignment of security apart from debt transfers bare title, beneficial interest remaining with owner of debt, 121 C 263
common-law rule was that upon assignment by sole plaintiff of his entire interest in subject-matter of action, his cause of action ceased, 123 C 375
while not affected by defenses arising after assignment, assignee of chose in action takes subject to all equities and defenses which could have been set up against assignor, 123 C 617
ordinarily assignee of chose in action takes it subject to equities and defenses which could have been set up against assignor, provided they have arisen before receipt of notice of assignment, 128 C 4
——so where defendant had no right to recover price paid for machines as to which there were breaches of warranty at time it received notice of assignments, it had no right of set-off as to them, 128 C 10
assignee of one claiming proceeds of insurance policy as beneficiary stands in his shoes, 128 C 77
statute that check does not operate as assignment of funds and that bank not liable to holder unless it accepts or certifies check, 128 C 476
——controls liability of bank to holder, and any common-law right of latter to recover as third party beneficiary supplanted, 128 C 476
——but check in connection with proof of other circumstances may operate as assignment vesting in holder exclusive claim to fund, 128 C 476
——check drawn by trustee in bankruptcy to pay a creditor's dividend not within this principle, 128 C 476

§ 4. Actions; Pleading; Practice

admissions of nominal plaintiff, 4 C 544, 16 C 588
of chose in action; after notice, the debt is not attachable as debtor's property, 9 C 552
——action lies against promisor of note for taking, and promisee for giving, a discharge, when, 9 C 552
assignor of note not negotiable not precluded by statute from giving testimony to prove payment of note to him, 11 C 342
action to be in assignor's name, unless otherwise allowed by statute, 17 C 107
delivery to donee of savings bank book gives him right to sue thereon in own name, 36 C 92
suit in name of assignor not precluded by statute, 39 C 349
assignee of claim must be actual bona fide owner of it to maintain suit, 49 C 487
assignee *held* to retain both legal and equitable title and to be real party to suit, 52 C 173
statute does not make assignee legal owner, 52 C 173
estoppel of assignee by judgment where he is cited in as sole defendant, 65 C 100
where assignee is plaintiff, matters adjudicated in action brought in his own right cannot avail him, 68 C 55
omission to allege bona fide ownership formal defect, waived if not demurred to, 71 C 613
assignor proper party to appeal where judgment is vacated by the appeal, 71 C 613
right of assignor to sue, 71 C 616
right of assignee of nonnegotiable instrument to sue in his own, or assignor's name, 72 C 261, 79 C 693
assignment pending trial necessitates change of parties, 73 C 377
where note is assigned before receiver is appointed, receiver cannot sue on it, 74 C 320
proof of bona fide ownership by proof of written assignment, 75 C 381, 76 C 229
effect of general denial to allegation of bona fide ownership by written assignment, 75 C 675
whether assignee of judgment can take out execution in own name, quaere, 82 C 208
if plaintiff dies pending appeal, the assignee of the judgment should be made a party, 82 C 208
assignee of judgment not estopped from appealing if defendant had notice of assignment though appeal was dismissed because of plaintiff's death, 82 C 208
assignee of judgment sues in his own name, 82 C 213
attorney may purchase judgment and sue in his own name, 85 C 260
raising of issue as to bona fides by plea in abatement, 85 C 260
validity of assignment is at issue if bona fides is attacked, 85 C 261
assignee of unpaid portion of future payment mortgage not proper plaintiff, when, 85 C 429
complaint must allege one is bona fide owner; burden of proof, 88 C 369

financial relations of assignor and assignee can be inquired into, 88 C 369
oral evidence of consideration for assignment admissible, 88 C 537
evidence that assignor is in financial difficulties admissible, 88 C 720
where lands are exchanged with assumption of incumbrances, assignee of either party cannot sue for breach of covenant against incumbrances, 91 C 652
assignment shortly before trial does not defeat action, 92 C 427
inability to sue because bond could not be assigned did not prevent claimant from obtaining his share of surety company's assets, 94 C 240
bond expressly stating that it might be assigned, did not change our statute authorizing one to sue in name of obligee without assignment, 94 C 240
assignee may sue in assignor's name or in his own, 99 C 451
right of trustee of mortgage to foreclose despite his assignment to another as trustee, 101 C 667
——harmless error if assignee is one who is named to receive mortgage debt in decree, 101 C 667
assignment subsequent to judgment of foreclosure by prior incumbrancer gives assignee right of redemption, 102 C 425
right of assignee of judgment to sue in his own name or that of assignor, 102 C 425
——to record judgment lien in his own name, 102 C 425
when note is nonnegotiable, mortgagor with notice of assignment, entitled to raise all equities and defenses against assignee which existed at time of assignment, 104 C 696
assignee of mere right to sue cannot maintain action; otherwise, where there is sale of interest with incidental right to sue, 106 C 66
of right of action growing out of note by executor to himself individually; burden on executor to show he was genuine owner, 111 C 661
despite assignment of cause of action while pending, assignor may pursue action to judgment in behalf of assignee and file judgment lien, 114 C 79
——when lien is filed and assigned, assignee may foreclose it, 114 C 79
plea alleging that defendant did not reside within jurisdiction, that plaintiff was not bona fide owner of claim sued on and that sole purpose of assignment of claim to plaintiff was to give court jurisdiction over judgment claim of defendant within jurisdiction, sufficient, 121 C 343
——that plea did not allege in precise words of statute that plaintiff was not "equitable and bona fide owner" of claim, nil sig., where plaintiff filed denial and contested issue, 121 C 343
——and finding justified conclusion of court sustaining plea, 121 C 343
evidence tending to show that plaintiff acquired title to claim at some time previous to assignment recited in complaint, properly excluded as not within its proper scope, 121 C 343
defense that colorable assignment has been made to deprive United States court of jurisdiction, if it exists, can only be made in particular action in question and its basis must be in laws of State where action is pending, 122 C 583
injunction refused to restrain suit in Missouri courts by Connecticut resident to whom claim against Connecticut insurance company has been assigned by Missouri resident to prevent removal to federal courts for diversity of citizenship, 122 C 584
——though assignee could not sue on such an assignment here (587) he could in Missouri, and our public policy could not be imposed on latter State nor our statute given extra-territorial effect, 122 C 584
——and since policy was issued in Missouri to resident there and beneficiary was resident there also, no impropriety in suit being brought there, 122 C 584
assignee can bring action to enforce restrictive covenant in own name or that of assignor; joinder of both did no harm to defendant, 126 C 516
assignor of partial interest in mortgage is proper party to realize upon obligation and to apportion amount recovered between himself and assignee, 128 C 370

ASSIGNMENT FOR BENEFIT OF CREDITORS

§ 1. In General
2. Powers and Duties of Assignee or Trustee

See also Fraudulent Conveyances § 2

§ 1. In General

right of action for tort does not pass by a general assignment in insolvency, 2 R 52
general assignment does not pass claim for damages for vexatious attachment, 2 R 53
United States not entitled to priority of pay-

ment, where insolvent debtor has made no assignment, 2 D 236
at common law an assignment on eve of failure, in trust for preferred creditors, not fraudulent, 3 D 340
assignment at common law, for benefit of creditors, not valid against those dissenting, 4 D 149
assent of creditor for whose benefit made, presumed, 2 C 637
not rendered fraudulent by power to trustee to continue to manufacture, 2 C 638
debtor's fraud not affecting creditors does not deprive him of the statutory benefits, 4 C 2
assignment for benefit of creditors, but stipulating for a discharge, void, 6 C 283
by nonresident, where recorded, 9 C 495
——good where made, but in contravention of our law, *held* invalid as to property here, 9 C 496
law of 1828 did not prevent the preferring of a creditor, 10 C 295
record of, does not supersede by-law of corporation regarding stock transfer, 13 C 498
——assignee has no equitable title to stock included in the assignment, as against attaching creditor having no actual notice, 13 C 498
at common law, assignment of all property excepting household goods, of which schedule is to be made, not invalid though schedule is never made, 15 C 176
——assignor cannot object to generality of, 15 C 177
generality in the terms of assignment is not an infirmity, 17 C 330
delay in filing is of no avail to attaching creditor, 17 C 331
retention of possession by assignor *held* not fraudulent per se, 17 C 332
——aliter, of possession before return of inventory, 21 C 212
claim of damages for malicious injury to goods passes by, 18 C 526
accidental omission of property is not remediable in equity when, 18 C 526
may be reformed in equity, as to insolvent, but not to the prejudice of creditors, 20 C 102
assignment is the introductory measure; completed by return of inventory, 21 C 211
——after its return the inventory is treated as parcel of, 21 C 211
assignor cannot act as agent of trustee before return of inventory, 21 C 212
assignment absolute in terms but made with a view to insolvency, *held* void, 21 C 611
Act of 1853; creditor's application is not defeated by subsequent voluntary assignment, 24 C 180
——such voluntary assignment to be received and recorded, 24 C 183
not void for reservation permitting insolvent to name trustee; such reservation is inoperative, 24 C 184
retention of possession in assignor is presumptive evidence of fraud, 26 C 420, 426
——rebutted by showing employment by trustee, 26 C 420, 426
not void for trustee's omission to inventory property, 26 C 426
——is a badge of fraud, but not conclusive, 26 C 426
right to except $100 *held* waived by failure to specifically except it, 28 C 50
——is not included in phrase, "all property by law exempt from execution," 28 C 50
all cash not specifically reserved to be scheduled, 28 C 50
in discretion of court to give benefit of statute to one acting bona fide on surrendering less than $100 retained and not excepted, 28 C 51
separate property of partner may pass under joint assignment, 29 C 446
——effect where partners reside in different probate districts, 29 C 447
purchaser from trustee is not bound to prove original assignment; title rests on decree ordering sale, 30 C 97
does not pass right to trade-mark, when, 33 C 165
derives force from common law, not statute, 34 C 550
is prima facie an act of bankruptcy, but is valid unless bankrupt proceedings are begun within six months, 38 C 84
by partners, of "all our real and personal estate," carries individual property, 44 C 289
judgment lien on real estate is not dissolved by being within sixty days, 47 C 412
separate assignments by all partners to same assignee conveys firm property, 47 C 578
the assignment gives trustee in insolvency no power over the rights of creditors to sue, 49 C 214
——only prevents creditor from getting more than his just share of the property, 49 C 214
general description of land sufficient, 49 C 316
trust deed for benefit of creditors *held* fraudulent as to nonassenting creditors, 49 C 320, 330
——on ground that it tended to hinder, delay and imperil creditors, 49 C 320, 330
effect of assignment upon questions of set-off, 49 C 569
trust deed to secure creditors is for the benefit of all the creditors, 52 C 235
——whether becoming creditors before or after the deed, 52 C 236
——letters *held* not to vary intention of, 52 C 236

agreement between attaching and other creditors to sell property and divide proceeds pro rata, *held* to supersede statutory mode of division, 54 C 7
——party receiving amount tendered in full *held* precluded from getting more, 54 C 8
where there is nothing to the contrary in the by-laws a majority of directors may meet without previous notice and make a valid assignment under statute, 55 C 467
creditor merely attending meeting at which trust deed was considered *held* not to have thereby assented to its terms, 55 C 571
——especially where the deed allowed nine months within which creditors might assent, 55 C 572
——the pursuit of one remedy by a creditor is not the abandonment of others, 55 C 573
failure to test validity of trust deed for ten years *held* not to be laches, 55 C 574
at common law, assignment by debtor in another State, will transfer debts due assignor here, if valid where made, 58 C 324
——does not affect that assignment was for the benefit of preferred creditors, 58 C 325
at common law, assignment for benefit of creditors, good where made is good here, 61 C 154
——though debt assigned has been attached here, 61 C 154
——fact that attaching creditor was a citizen of this State *held* not to affect, 61 C 155
no demand or notice from trustee is necessary on officer's selling on execution after attachment is dissolved by statute, 62 C 316
——burden on officer to show no knowledge of assignment, 62 C 316
assignment by insolvent to creditor's committee upon valuable consideration; rights of nonassenting creditor; of the committee, 105 C 584

§ 2. Powers and Duties of Assignee or Trustee

assignee under foreign insolvent law cannot sue here in his own name, 4 C 315
assignee is, in equity, a bona fide purchaser and creditor, 10 C 254
assignee gains no equitable title to stock transferred contrary to by-law of company as against creditor not having actual notice, 13 C 498
assignee's title reaches only to property assigned, 18 C 525
——purchaser's remedy where assignee had no title, 18 C 528
assignee takes only equitable interest in stock subject to bank's lien, 26 C 153
trustee takes legal title to choses in action, whether negotiable or not, 26 C 450
——and whether standing in name of debtor, or of stranger, 26 C 450
assignee takes property subject to all existing equities, 28 C 245, 58 C 34
a conveyance fraudulent and void as against attaching creditor is also invalid as against the trustee, 29 C 255, 48 C 313
title passes to trustee, who may sue in his own name, 30 C 97
quaere, as to estoppel affecting part of creditors only, 30 C 229, note
acquires title to all insolvent had at commencement of proceedings, 31 C 507
statute contemplates appointment of, in a short time, 31 C 507
trustee is the holder of property assigned to an insolvent surety, 36 C 356
——such surety is not entitled to possession of the property not having paid the debt, 36 C 356
——if previous security is not found inadequate, 36 C 356
assignee takes trust property subject to the trust and creditors have no claim to trust property, 37 C 185
suit by trustee is conclusive evidence of acceptance of trust, 47 C 502
——with evidence of due appointment, prima facie shows him to be duly qualified, 47 C 502
has same rights as insolvent to compel reconveyance of property fraudulently obtained, 47 C 507
in bringing suit should declare how and wherefore he is trustee, 48 C 267
is not estopped by fraud of debtor in a sale void as to creditors, 48 C 313
——when trustee in insolvency abandons his right, a creditor may proceed against a fraudulent grantee, 49 C 214
——immaterial that he has proved claim and received dividend, 49 C 214
assignment gives trustee in insolvency no power over the right of creditor to sue, 49 C 214
assignee in, takes assets burdened with attorney's lien, 51 C 107
trustee in insolvency bound to return surplus to original owner, 51 C 107
——equity will treat easement not needed, as if reconveyed, 51 C 309
may decline trust if estate is insufficient to meet his expenses, 56 C 102
——costs of attaching creditors whose liens are dissolved take precedence over trustee's compensation, 56 C 100, 102
takes estate subject to burdens and equities against debtor, 58 C 43
——in a suit by, defendant may set off amount paid as surety on note for debtor as principal, 58 C 33
life policy for benefit of insured is an asset, 61 C 248

——but if not fraudulent or prejudicial to creditors insolvent has a right to transfer policy to wife, 61 C 248
where assignee in insolvency knowing of life policy as an asset, does not require its delivery nor do any of the creditors, *held* the claim was thereby abandoned, 61 C 249
no demand or notice from trustee is necessary on officer selling property on execution after attachment is dissolved, 62 C 316
——burden on officer to show no knowledge of assignment, 62 C 316
does not shift burden that trustee alleged knowledge in complaint, 62 C 317
trustee stands in place of creditors, 62 C 450
not estopped to attack sale of debtor by retention of purchase price note, 64 C 491
——power to ratify debtor's contract, 64 C 491
takes estate subject to existing burdens; right of creditor of insolvent to set off debt owed him in action by trustee, 65 C 76
takes title to all rights of action for injury to property, in tort, or ex contractu, 66 C 500
assignee's rights to property of wife of debtor which she has let assignee take into his possession, 68 C 560
trustee in insolvency or receiver as "personal representative," 70 C 231
gets absolute title to property bought upon condition, where sale is not recorded, though having knowledge of condition; his knowledge will not be imputed to creditors, 70 C 325
cannot appeal from refusal of court to extend time for presenting claims; such appeal erased from the docket, 70 C 455
duties in general; whom he represents; right to appeal from allowance of claims, 70 C 457
title same, whether proceedings voluntary or involuntary; represents creditors as well as debtor, 71 C 358
——right to reclaim property runs beyond that of debtor; not bona fide purchaser, 71 C 358
——mortgage of debtor unrecorded for two years ineffective against, 71 C 358
Probate Court may authorize settlement of controversy and approve terms in advance, 71 C 590
trustee may appear in any form to defend estate, 71 C 708
estoppel against him by judgment recovered on claim presented, to which he is a party, 71 C 715
trustee's title; avoiding fraudulent conveyance, 72 C 710, 75 C 633, 78 C 679
right to recover property transferred in breach of insolvency laws; essential elements of action, 73 C 227
cannot attack sale by debtor to bona fide purchaser, 75 C 633
assignee for creditors as personal representative of vendee under conditional sales law, 105 C 584
——if no consideration given he takes subject to all equities, 105 C 588
——effect as regards nonassenting creditors, 105 C 590
duty of creditors' committee to distribute assets ratably among creditors, 110 C 379
where voluntary committee of creditors asked one to withdraw his claim "for the present" and he stated he was willing to withdraw for any reasonable time but would expect percentage due him, *held* not to be a waiver of right to dividend, 110 C 379
——committee personally liable to him for percentage he would have been entitled to, 110 C 379
defendant constituted trustee for creditors to complete apartment house and distribute money from mortgage; various acts *held* not wilful misconduct under agreement, 113 C 429
——statements and actions of trustee *held* not to render him personally liable for materialman's bill, 113 C 429

ASSOCIATIONS

See Beneficiary Associations; Labor Unions; Voluntary Associations

ASSUMPSIT

See Contracts; Pleading § 10; Andrews and Fowler, Maltbie and Townshend Digests

ASSUMPTION OF RISK

§ 1. In General
2. By Tenant
3. Procedure

Note: Cases involving assumption of risk by servant are listed under Master and Servant, § 8.

§ 1. In General

assumption of risk in case of guest in automobile, 105 C 521

not restricted to cases where there is contract relation between parties, 116 C 283

may operate in field of negligence; it is then distinct from contributory negligence; defendant may admit negligence and freedom of plaintiff from contributory negligence and still be not liable on this principle, 116 C 283

fact that contributory negligence is not defense to action based upon reckless misconduct under guest statute does not prevent defense of assumption of risk in proper case, 116 C 283

limitations of doctrine; perception and appreciation of risk by injured person; incurring of risk voluntarily; continuing exposure due to inability to escape; application where party has opportunity to avoid continuing risk and fails to do so, 116 C 283

one is entitled to assume that another will exercise proper care until he perceives that other is not doing so, 116 C 283

——he does not assume risk that another will by some sudden act or omission subject him to danger, 116 C 283

pedestrian crossing highway and injured by automobile or driver of one car injured by collision with another may be guilty of contributory negligence but he does not assume risk of negligence of party causing accident, 116 C 283

mere possibility known to guest in automobile that driver may be guilty of negligence not sufficient basis to hold he has assumed that risk, 116 C 283

——it is only when negligent conduct has actually ensued that there can be assumption of risk incident to it, 116 C 283

young girl and elderly lady guests in rear seat of defendant's car heard discussion of driver's sleepiness as he was driving up mountain at night and accident occurred shortly thereafter; *held* it could not be said as matter of law that they appreciated risk, 116 C 283

——and jury could not reasonably find that by continuing in car they voluntarily chose to assume risk, 116 C 283

distinction between assumption of risk and contributory negligence; both may exist in given case or one may exist without presence of other, 117 C 353

——assumption of risk exists where none of fault rests on plaintiff but where he assumes consequences of injury occurring without his fault—through fault of defendant, third person, or no one, 117 C 353

——contributory negligence exists where some act of plaintiff was proximate cause of injury, 117 C 354

competent defense in action for injury caused by "absolute" nuisance, 117 C 359

trespasser deemed to assume risks he may incur, 117 C 368

one unlawfully putting obstruction on highway in nature of nuisance deemed to have assumed risk incident to his conduct, (dis.), 117 C 369

——driver on highway owes no duty to avoid injury to one responsible for obstruction until he becomes aware of it or knows its presence is reasonably to be expected, (dis.) 117 C 369

by one using highway under repair which is posted, 121 C 475, and see Highways

as defense to action for injury from explosives, 124 C 366

doctrine ordinarily applicable in cases concerning amusement devices, because a passenger knows in general way risk involved, 126 C 227

in absence of some negligent act on part of defendant, neither a cause of action nor an occasion for application of doctrine arises, 126 C 227

conditions under which one undertaking work assumes risk, 126 C 468

——plaintiffs injured by contact of steel tape they were using with unguarded feed wire below railroad bridge did not assume risk of so unusual an occurrence, 126 C 469

when person assumes risk; under such circumstances obligation is on him to guard himself against it and if he suffers injury because of failure to do so he cannot recover damages, 128 C 249

in accepting permission of owner of building to use elevator to go to office when building closed, under conditions and with knowledge and comprehension of danger of falling down elevator shaft if elevator not there, he assumed risk, 128 C 249

——risk of injury was intrinsic in use of el-

evator under existing conditions, 128 C 253
knowledge of general conditions indicative of risk of injury may not afford basis for conclusion that risk due to particular condition was assumed, 128 C 252
no basis for doctrine where plaintiff fell down unlighted stairway, 128 C 527
——"voluntary assumption of risk" as a form of contributory negligence distinguished from ordinary doctrine, 128 C 531
plaintiff slipped on loose plank on cellar steps of defendant's building as he stepped on it with bag of coal on shoulder; conclusion that steps not reasonably safe, that plaintiff used due care and that he did not assume risk sustained, 128 C 679
where there was nothing to charge passenger with knowledge or comprehension of risk of defendant's negligent driving, conclusion that she did not assume risk correct, 129 C 57
no foundation for doctrine where plaintiff could not anticipate combination of factors, absence of porch handrail and push, which caused injury, 129 C 320
application of doctrine in this state is practical, not theoretical, 129 C 320

§ 2. By Tenant

principle of assumption of risk applicable where tenant leases premises in open, visible and dangerous structural condition, 116 C 283
tenant assumes risk of structural condition of building as it would appear to person of ordinary observation when tenancy began, 117 C 347
——does not necessarily assume risk at beginning of lease; commencement of tenancy determines time, 117 C 347
——at this time it is tenant's duty to observe condition; he takes it as he finds it, 117 C 355
no assumption of risk by tenant through user and knowledge of unlighted stairway by way of waiver, as one cannot waive public obligation of another, 117 C 347
——so as to maintenance of fire escape by landlord, 117 C 357
——so as to keeping machinery safe by employer, 117 C 356
landlord contended that plaintiff, by residing several years in apartment and using staircase unlighted at night, assumed risk of injury therefrom; when tenancy, which was month to month, began, fixture in hallway was lighted to 10 p. m.; *held* tenant did not assume risk of structural condition existing at time of accident, 117 C 348
——darkness of stairway was not caused by structural defect but by failure to make use of structure, 117 C 348
where there is agreement by landlord to repair portion of premises, ordinary rules as to assumption by tenant of obvious defects in leased premises do not apply, 119 C 398
risks are not assumed by plaintiff unless he has or ought to have comprehension of peril, and having such knowledge and comprehension continues of own volition to subject himself to that peril, 119 C 398
——not sufficient that tenant knew of general defective condition of porch, 119 C 398
——nor would it be sufficient if he knew of particular defect which caused injuries; test is comprehension of risk and this is question of fact, 119 C 398
——and if tenant was induced to continue use of porch by promise of landlord to repair, he would not be held to have assumed risk unless he was guilty of such conduct as amounted to contributory negligence, 119 C 398
lessee takes exclusive possession of premises and accepts them as they are, 120 C 331
——he assumes risk of any structural defects except such as he could not discern with reasonable diligence, and with knowledge of which landlord is chargeable, 120 C 331
——rule does not apply to portions of building not included in apartment rented, 120 C 331
——there does not arise, as matter of law, out of his tenancy of portion of building any assumption of risk of structural defects in other portions of building not included in lease, 120 C 331
question of assumption of risk by tenant in attempting to use elevator in dark without turning on lights correctly left to jury as question of fact, 122 C 362
of lessee for structural defects, 125 C 515 and see LANDLORD AND TENANT

§ 3. Procedure

must be specially pleaded; this being rule of procedure it applies despite fact that accident happened in Massachusetts, 116 C 545
defense that plaintiff assumed risk in entering automobile without facts supporting it, demurrable, 117 C 97
——refusal of court to allow amendment setting up such facts error, 117 C 97
——as well as refusal to allow filing of defense that plaintiff recklessly exposed herself to danger by entering car whose driver she knew to be incompetent, 117 C 97
——latter presents different legal situation from that of assumption of risk, 117 C 97
claim that plaintiff, by voluntarily entering firehouse and climbing on truck, assumed risks involved cannot be considered where not pleaded as defense, 118 C 312
must be specially pleaded, 119 C 230, 120 C 336

ATTACHMENT

§ 1. In General.
2. Property Subject to; Exemptions
3. Requisites of Valid Attachment
4. Priority and Rights between Claimants
5. Officer's Receipt
6. Dissolution
7. Bond

See also Fraudulent Conveyances; Garnishment; Liens § 10; Process; Public Officers § 9

§ 1. In General

effect of material alteration of writ of attachment, 4 D 436, 5 C 538
officer may release the body and attach personal estate, 1 C 258
direction to officer to take specific articles does not limit his search to these articles, nor excuse neglect of official duty, 4 C 527
attaching creditor acquires no interest by force of attachment, 6 C 80
attaching creditor can obtain injunction to prevent waste, 11 C 51
officer attaching goods subject to lien for freight by paying the freight is subrogated to rights of carrier, 16 C 71
officer may remove property into another town for safekeeping, 28 C 523
declaration for excessive attachment is fatal, if it fails to aver malice, 29 C 126
attaching creditor regarded with less favor than formerly, 31 C 38
when attached property taken away by third person, officer can recover only on ground of his own liability, 37 C 588
attachment of land is an incumbrance within covenant against incumbrances, 43 C 129
officer can charge cost of keep of attached animal, 47 C 577
attachment of land creates lien only for amount directed by writ to be attached, 52 C 17
statutes de, to be strictly construed, 52 C 19
of B's goods under writ against A, a breach of constable's bond, 68 C 1
——a tort, 75 C 107, 77 C 370
colorable or fraudulent transfer will not prevent attachment, 68 C 389, 84 C 678, 85 C 698, 101 C 562
attachment of the body on ground of action being in tort, *held* not to prevent treatment of case as ex contractu in later proceedings, 68 C 459
invalidity of, does not affect validity of judgment recovered, 68 C 471
action for damages for malicious attachment not barred by former judgment in replevin against officer, 70 C 332
plaintiff directing, and officers making, wrongful attachment are joint tort-feasors, 70 C 341, 77 C 370
levy of attachment on real estate distinguished from levy of execution, 70 C 356
application of state laws to action in United States courts, 73 C 154
only lies where money damages are claimed, 75 C 187
not prevented by offer of volunteer to pay claim, 76 C 515
purpose of attachment is to compel appearance, 84 C 618, 85 C 573
of nonresident's property makes possible judgment in rem, 84 C 618
if nonresident appears, the action is in personam, 84 C 619
how far an attachment is a lien, 85 C 573, 577
creditor of nonresident beneficiary must attach to get jurisdiction, 90 C 293
nature of proceedings, 90 C 570
of apparent record title to land lies only where creditor is misled and gives credit, 92 C 345
duty of attaching officer not to divulge information to opponents, 93 C 112
order to pay alimony did not affect the attachment, 94 C 280
attachment as duress, 97 C 129
attachment in tort action does not make one a creditor so as to avoid transfer of property as fraudulent conveyance, 98 C 578
neglect of officer making attachment to levy execution on property attached by him, 99 C 663
preventing attachment by fraud, makes wrongdoer liable in damages, 100 C 81
act of corporate officer in disclosing shares is act of corporation, 100 C 259
——but corporation not bound by his mistake, if no loss results, 100 C 259
——no loss presumed; must be shown, 100 C 259
attachment dates from time certificate lodged, 109 C 433
of property of nonresident husband by nonresident wife gives jurisdiction to court in nonsupport action, 111 C 124
statutes concerning body attachment and executions reviewed, 111 C 225

execution not corollary to attachment; may be made when latter cannot be had, 111 C 225

sixty-day period for execution on attached property in compensation case runs from end of compensation period or from date compensation is commuted to definite sum, 112 C 370

facts necessary to prove when action is brought under statute de body attachment and execution; money judgment cannot be rendered, 114 C 53

in action to secure specific performance of covenant to furnish bond for payment of rent, that plaintiff attached money in bank no defense, 119 C 372

deputy sheriff did not have to show reliance on apparent ownership of car by attaching creditor or himself to take advantage of defective bill of sale, 127 C 199

attachment gives a direct and positive interest in the property, 128 C 199

§ 2. Property Subject to; Exemptions

interest of part owner in vessel, attachable, 2 R 34

——right of other owners to make voyage, not affected, 2 R 34

goods in defendant's hands and in hands of garnishee, attachable on same writ, 2 R 133

one's body and estate cannot both be held on same writ, 2 R 347

as a rule all debtor's estate is liable for his debts, 4 D 150, 17 C 281, 20 C 419

body may be released from, and property substituted, on same writ, 1 C 258

interest taken by attachment of partner's property, 2 C 516, 4 C 540, 13 C 461

retention of possession of exempt personal property after sale not fraudulent, 4 C 450

real and personal estate equally liable to, 8 C 285

——real estate attachable, though sufficient personalty be exposed, 8 C 285

creditor takes only debtor's interest in firm property, 10 C 41

——whether partnership be known or dormant, 10 C 41

interest of one joint tenant, attachable for his individual debt, 10 C 47

——property may be moved by officer, 10 C 48

——proper course for officer in such cases, 10 C 49

partner's interest to be taken subject to partnership debts, 14 C 408

interest of cotenant in ship is subject to, 14 C 408

——other cotenants required to give security if vessel is sent on voyage, 14 C 408

goods subject to lien may be attached, 16 C 85

equitable interests in realty are subject to, 17 C 281

creditor of one partner can attach only interest of partner in partnership property, 18 C 294

property of one or both of two joint debtors is subject to, 20 C 495

equitable interest in stocks is subject to, 33 C 379

interest of vendee under conditional sale *held* not attachable, 40 C 148

wife's personal property not liable to, for husband's debts, when, 42 C 143

mortgagor's right of redemption attachable, 43 C 281

sale of exempt property to evade attachment does not render it attachable, 46 C 414

interest of husband in wife's estate is not subject to, under statute, 49 C 33

capital stock of nonresident bank owned by nonresident, but pledged here, is not attachable here, 53 C 393

certificates of capital stock are not subject to, 53 C 396

district school teacher is not a public officer within meaning of law exempting salaries of such officers from attachment, 53 C 502

attachment of property purchased on condition, 57 C 415, 58 C 475

stock bought by husband for wife, but certificates in name of husband; stock *held* not subject to, by his creditors, 57 C 459

——especially where creditors had knowledge of the facts, 57 C 459

——an injunction will lie in favor of wife against levy, though she might sue at law for the value of the stock, 57 C 460

a life interest with power to spend what is necessary for support is not subject to, under statute, 62 C 436

an estate by curtesy is not subject to, while any children of the marriage survive, 62 C 436

statute de right to attach defendant's body, 63 C 371

property in hands of receiver is not attachable, 66 C 350, 70 C 232

——property of insolvent corporation, 71 C 345

exemption of "implements of trade"; includes photographic lens, 67 C 312

interest in goods as tenant in common or partner is attachable, 68 C 16, 71 C 698

obligee in bond for a deed who has paid nothing has no attachable interest in the land, 70 C 274

goods retained in possession of conditional vendor are subject to attachment, though sale was made and recorded as prescribed by law, 70 C 505

interests so uncertain or remote as not to be salable on execution are not attachable, 71 C 149

equitable interests are subject to, 71 C 154, 76 C 528

husband's property may be attached in action

by wife seeking gross sum by way of an allowance or alimony, 72 C 157
personal property sold but not delivered still subject to attachment against seller, 72 C 509, 74 C 146, 86 C 372
of liquor license, 74 C 392
——attachable by licensee's creditors, until statutory steps to accomplish transfer are all complete, 69 C 237
of body where property is put out of reach, 74 C 671, 81 C 626, 84 C 628
of exempt property is a tort; right to resist or to retake goods, 75 C 104
benefits due from mutual aid society not exempt under statute exempting from attachment benefits due from fraternal society, 76 C 132
mortgaged chattels in hands of mortgagee attachable by creditors of mortgagor, 77 C 370
where lease gives tenant right to replace property, 80 C 14
mortgagee's interest in real estate is not attachable, 81 C 419, 83 C 356, 92 C 345
creditor at time of conveyance can attach land wrongfully conveyed, 81 C 626
creditor cannot attach interest that is uncertain and indeterminate, 83 C 346
stock of nonresident in Connecticut corporation attachable, 84 C 618
of body; statute applies to fraudulent conveyance of real estate as well as personal property, 84 C 628
fraudulent transfer of pauper's property attachable by town, 84 C 678
all property of debtor subject to his creditors in theory, 85 C 67
property of public service corporation subject to attachment, 89 C 60
unrestricted right for life to income of a trust attachable, 90 C 293
equitable interest acquired by part payment on land is attachable, 90 C 555
no attachable interest if vendee gives up land partly paid for before attachment, 90 C 555
statute allowing attachment of goods conditionally sold not applicable to real estate, 90 C 555
equitable interest of others in debtor's land cannot be taken unless debt was based on debtor's absolute ownership of his land, 91 C 571
right of attaching creditor to rely on record title, 92 C 345
interest of cestui que trust, 93 C 409
property sold conditionally without statutory requirements, 94 C 567
if attachment is released and property taken back by vendor and resold properly, creditor cannot again attach, 94 C 567
conditional vendee cannot attach the property in his possession as such, 95 C 172
equity in stock of corporation pledged to secure loan, 95 C 713
alimony not a debt; not attachable, 102 C 703
of body in statutory action against fraudulent debtor; when permissible under complaint having several counts, 105 C 679
vested remainder in trust fund as subject to attachment and execution, 108 C 339
liquors may be attached and sold on execution; bailee liable to sheriff for shortage, 108 C 659
limitations of body attachment, 111 C 225
exemption of "implements of debtor's trade"; printing press, 121 C 423
——where P's business was job printing to supply local orders, press driven by electric motor and accessories operated by hand were exempt, 121 C 423
——cases reviewed, 121 C 423
——deputy sheriff guilty of conversion for attaching them and sheriff under whom and plaintiff for whom he acted also answerable, 121 C 423
——demand for return of property not prerequisite to suit, 121 C 429
——where no finding that defendant had knowledge that property was exempt, no waiver, 121 C 423
——and no estoppel by conduct in keeping silent, 121 C 423
exemptions from attachment are to be liberally interpreted, 121 C 427
policy of our law to subject all property of debtor, not exempt from execution, to payment of his debts, 123 C 392
policy of law that all property of debtor not exempt be open to attachment, 128 C 509
it is policy of the law to subject all of a debtor's property, legal or equitable, to his debts, subject to definite limitations, 129 C 219

§ 3. Requisites of Valid Attachment

variance in description of real estate attached in copy filed with town clerk not fatal, K 103
where attached property not removed, presumptive evidence transaction fraudulent, 3 C 431
there must be an actual or constructive possession, 4 C 361, 8 C 334, 56 C 421
——possession must be taken and held, 7 C 272
——if goods are allowed to return to debtor's possession lien is dissolved, 7 C 273
merely unlocking door and declaring carriage attached, insufficient, 8 C 335
——as against second officer who springs in and seizes it, 8 C 335
by indifferent person valid, though direction appear only on back of writ, 9 C 207
officer need not certify on defendant's copy

that the return thereon is a true copy of his return on original writ, 9 C 525
officer making second attachment should notify officer making prior one, 11 C 25
personal property to be actually moved, 14 C 225
——removal may be dispensed with, when, 14 C 226, 40 C 222, 62 C 556
——officer's continual presence unnecessary, 14 C 226
duty of officer making successive attachments on same property, 16 C 545
——should preserve lien for second creditor, if goods are not sold on first attachment, 16 C 545
attachment of bank shares in cashier's absence without leaving copy, raises no lien, 17 C 259
record of attachment where land is taken, notice to all, 17 C 284
of sundry articles requiring extended time, constitutes but one act, when, 19 C 467
second attachment by same officer without notice to his bailee, or removal of property, is valid, 20 C 375
officer may appoint attaching creditor his bailee, 20 C 376
attachment need not be a notorious act, 20 C 376
officer must return process to court to justify himself in making, 25 C 573
of property of nonresident; service how made, 31 C 396
——copy to be a true and attested one, 31 C 396
successive attachments on different writs, 36 C 582
officer's return alone can show what property is attached, 37 C 591
rule as to removal inapplicable where possession is notoriously changed, 40 C 222
——notoriety of change, a question for jury, 40 C 222
cannot be made by officer before receipt of writ directing it, 43 C 185
——filing certificate of attachment of land, prior to receipt of process, 43 C 186
service on wrong party; sale by officer prior to suit; attempted service, no justification of sale, 44 C 140
creates a lien for amount named in writ and no more, 48 C 138, 52 C 19
it seems that an officer cannot search pockets of defendant for property, 49 C 68
under statute officer bound to attach real estate if sufficient to satisfy, 50 C 318
——no difference if real estate is incumbered if equity sufficient, 50 C 320
situs of capital stock in company for purposes of, 53 C 395
equity in shares of capital stock of company pledged as collateral, how attached, 53 C 397
appointment of receiver suspends creditor's right to attach, 57 C 387
officer's return *held* to give insufficient description of estate attached, 62 C 21
an officer taking possession and putting a keeper in charge, has actual, rightful, exclusive and undisturbed possession and need not move property, 62 C 556
——nor give reasons in return for not moving, 62 C 556
omission of details in return; amendment, 65 C 193
in case of attachment of liquor license, 74 C 392
law must be strictly complied with, 75 C 107
attachment of real property; leaving copy of writ at office of agent of nonresident, etc., 75 C 660
validity determined by law of date of making, 76 C 133
return is no part of plaintiff's statement of his cause of action, 81 C 284
return of failure to disclose not inconsistent with disclosure of no indebtedness, 81 C 616
shares of stock have situs at location of corporation, 84 C 618
Superior Court does not assume that changes were made in return other than shown of record, 84 C 618
failure to get certificate of shares owned does not invalidate, 84 C 619
of real estate; necessary to leave copy indorsed by officer, 90 C 338
officer acts at his peril in making attachment; owner's rights and estoppel, 90 C 570
in attachment of property of nonresident, statutory requirements of notice must be strictly followed, 91 C 571
meaning of statute concerning attachment of machinery, 92 C 11
engines and machinery attachable without removal, 92 C 11
need not make return that machinery could not be removed, 92 C 12
what posting of notice is sufficient, 92 C 12
what is a sufficient description if others put on notice, 92 C 12
manufacturing or mechanical establishment includes stone quarry, 92 C 12
return not conclusive; may be attacked, 92 C 16
when officer can force a door, 92 C 388
requisite steps to attachment are lawful seizure of property, service on defendant with description of property and return with like description, 99 C 372
——where officer entering plant to attach all mechanical equipment merely takes, and states in return inventory of, some property in storehouse attachment does not hold equipment, 99 C 372
——return could not be amended to include equipment as that can be done only where

all steps have been taken but there is error in detailing them, 99 C 372
possession by officer by removal or placing keeper in charge or otherwise essential act, 99 C 583
merely posting notice of attachment on cage of lions not sufficient, 99 C 591
when return is prima facie evidence of defendant's ownership; when conclusive, 99 C 664
physical possession indispensable to validity of attachment of tangible personalty, 107 C 300
possession of keeper is possession of officer, 107 C 300
necessary implication from statute that if service is completed estate is held, 109 C 433
certificate of attachment of real estate lodged in town clerk's office affects valid attachment against subsequent purchaser, though not recorded or indexed, 109 C 433
——history of attachment of real estate, 109 C 433
failure to inventory cannot be set up as defense where defendant's request to substitute a bond was cause of it, 112 C 370
certificate recited action returnable to "Superior Court of Common Pleas" due to mistake of scrivener; defect inconsequential, 114 C 79

§ 4. Priority and Rights between Claimants

duration of lien, where judgment is affirmed on writ of error, 1 R 483
creditor acquires no interest in land by, 5 D 80
release by mortgagee does not affect previous lien by, 5 D 80
stranger's duty to inform officer which are his goods, 7 C 280
——officer may justify taking of stranger's goods, if fraudulently intermingled, 7 C 280
creditor's right not affected by subsequent notice of prior defective mortgage, 8 C 555
creditor's lien by, is as effective as a mortgage, and rests on same equitable grounds, 8 C 559
duration of lien, where several attach same property, 9 C 535
attaching creditor and purchaser, each having notice, stand alike in equity, 10 C 254
no presumption that writs served same day were served at same time, 11 C 23
officer may testify as to time of day attachment was made, 11 C 24
effect of attachment of debt in hands of assignee, debtor having had no notice, 14 C 145
second attaching creditor liable in trespass to officer serving prior attachment, for removal of the property, 14 C 228
——officer not bound to make demand on execution, prior to suit, 14 C 228
creditor of partner takes partnership property subject to claims against firm, 14 C 410, 18 C 301
officer paying lien stands in place of party indemnified, 16 C 85
officer's duty to produce receipted property for second attaching creditor, 16 C 574
lien created by, how affected by reversal of judgment, 17 C 77
lien by, in favor of trespasser, does not prevent sale by owner, 17 C 174
if legally made, cannot be destroyed by debtor before execution levied, 17 C 283
conflict between State and United States officers as to, 18 C 8
officer not justified in taking property from custody of the law, 18 C 17
——officer retaking such property, not liable in trespass, 18 C 15
attachment made on second day in lieu of one made on first day, is a distinct attachment, 19 C 468
attachment of one's own property after a conversion, is no restoration, 20 C 216
——does not estop claim of former ownership, 20 C 216
prior attachment for no actual debt is postponed in equity, to a later bona fide one, 25 C 361
trespass for a taking from officer, will not lie unless there has been a legal attachment, 37 C 589
insolvency; sale of equity of redemption; deed not recorded; composition, 39 C 319
——possession by mortgagor; attachment of crops valid, as against purchaser of equity, 39 C 319
mortgage not seasonably recorded, inoperative against subsequent attachment, 40 C 222
notice of relinquishment of attachment, not equivalent to a return or offer of return, 44 C 173
——officer liable for damage to the property after such notice, 44 C 174
purchaser in good faith from debtor holds property as against receiptor, 45 C 107
——burden on purchaser to show bona fides, 45 C 107
receiver of foreign company's property here may hold same, when once in possession, 45 C 130
——if attached by creditor, receiptor not liable for even nominal damages, 45 C 134
bankruptcy; judgment limited to property attached, when, 45 C 500
neither officer nor creditor acquires a lien for keeping horse, where attachment is dissolved by insolvency, 47 C 578
——though expense becomes a preferred claim, 47 C 578
officer presumed to have attached to amount directed in writ, 48 C 138, 52 C 19
land fraudulently conveyed is open to, by any creditor, 49 C 215

——even where grantor has assigned in insolvency, if trustee elects not to avoid the transfer, 49 C 214
agreement between attaching and other creditors to sell property and divide proceeds pro rata, 54 C 6
——*held* that agreement superseded statutory method of division, 54 C 7
——party receiving amount tendered in full, precluded from getting more, 54 C 8
——officer thus selling and dividing proceeds acts unofficially; is not limited to statutory fees, 54 C 8
by Practice Act, an attachment made by original plaintiff enures to benefit of all who obtain judgment, 54 C 242
——confers jurisdiction where court might not otherwise have jurisdiction as to the new coplaintiff, 54 C 242
liquors held under conditional sale are not subject to, by creditor of vendee, 57 C 408
property in the hands of a receiver is not attachable, 66 C 350, 70 C 232
effect of receivership proceedings here on attachment of property of a Connecticut corporation in an action in another state, 71 C 345
of land without notice of unrecorded deed gives priority over grantee in deed, 71 C 364
rights where interest in partnership is attached, but no steps taken to determine it, and partnership later becomes insolvent, 71 C 698
agreement to indemnify officer implied from directions to attach property title to which is in dispute, 72 C 238
refusal to deliver to officer property which he has attached but lost possession of not obstruction of process, 74 C 64
of goods sold but retained in possession, 74 C 146, 86 C 372, 89 C 439
lien exists from date of service; attachment made four months before bankruptcy good against trustee; subrogation where trustee sells attached property; title to real estate attached not in issue in action where attachment is made, 74 C 616
rights under attachment by consignor's creditors of goods represented by bill of lading given as security for discount of a draft, 77 C 341
attachment only reaches defendant's rights in property; attaching plaintiff not a bona fide purchaser, 79 C 290, 570
waiver by owner of goods is good against attaching plaintiff, 79 C 570
one who attaches interest of conditional vendee stands in his shoes as regards application of payments, 80 C 389
is a lien with right to redeem from prior mortgages, 83 C 514
how far it takes priority, 85 C 578
unrecorded mortgage not good against attachment, 85 C 694
discharge in bankruptcy does not destroy benefit of attachment, 86 C 234
payment during suit should not prejudice attachment, 86 C 235
attaching creditor of legal title holder of stock cannot assail position of beneficial owner, 87 C 601
lien continued against insolvent estate of deceased person, 88 C 100
attaching creditor can redeem prior unrecorded mortgage he knew of; no priority, 89 C 59
when attaching creditor subordinated to unrecorded equitable claim, 89 C 64
survival of attachment after death not applicable to insolvency, 90 C 323
deed recorded within reasonable time takes priority over attachment, 91 C 421
attachment has priority over deed not recorded in reasonable time, 91 C 423
creditor takes only such title as debtor had, 91 C 571
of naked interest of mortgagee covers only debtor's interest, 92 C 345
of apparent ownership in land not misleading, 92 C 345
unrecorded conditional contract of sale does not protect against attachment, 94 C 567
to protect against attachment, mortgage must particularly describe property, 95 C 172
one who buys mortgaged personal property by conditional sale and assumes payment of mortgage, cannot, by attaching property in action against vendor on another contract, secure priority over mortgage, 95 C 173
wife estopped to claim ownership of property sold in her presence by her husband, with her knowledge and acquiescence, 101 C 449
——her conduct as effectual to transfer her title as though she signed bill of sale, 101 C 449
——she could not later bring action for conversion against vendee's attaching creditor, 101 C 449
lender took bill of sale of automobile as security and gave borrower conditional bill of sale; borrower retained possession; *held* automobile subject to attachment by borrower's creditors, 101 C 562
assignee of attaching creditor obtains all rights of assignor, 102 C 425
——including right of redemption under judgment of foreclosure in suit by prior incumbrancer, 102 C 425
general rule is that attaching creditor acquires lien only on interest of debtors, 102 C 425
——this rule not applicable in situation involving fraud, insolvency, or failure to record incumbrance, 102 C 425
mortgage of personal property to be valid

against attachment must strictly comply with statutes, 102 C 684
attaching creditor of personalty not charged with notice of record of defectively executed mortgage of both realty and personalty, 102 C 684
in absence of fraud, or his debtor's apparent ownership of property, attaching creditor takes only debtor's actual interest in property, 103 C 341
assignee by parol of life insurance policy, *held* to have priority over attaching creditor of assignor, 103 C 341
right of creditors to attach property fraudulently transferred, 103 C 625
purchaser of real estate put upon notice of possible claim affecting title by certificate of attachment; this notice not affected by release of attachment and substitution of bond, 104 C 285
property not subject to attachment after appointment of receiver though he does not take possession, 106 C 159
estoppel of grantee who agrees to pay any judgment secured upon existing attachment, to dispute validity of attachment, or its amount, or to take advantage of substitution of cause of action after attachment, 107 C 52
of article sold under conditional bill of sale is subject to vendor's right to retain title, though vendee was retailer who bought to resell, 107 C 366
of property held under conditional bill of sale; effect, 111 C 299
——belief of officer that defendant owned it nil sig., 111 C 299
——where on learning of nature of defendant's title officer tenders it back, and on his refusal to receive it tendered it to conditional vendor who also refused to receive it, attachment was abandoned and officer held it merely as individual, 111 C 299
——where he then wrote owner he would look to him for payment, and owner later sold it, he was liable to officer on implied contract, 111 C 299
attempted consignment of cars *held* subterfuge and to have been a sale, and the cars subject to attachment, 112 C 370
right of vendee in possession of real estate under contract not recorded where part of purchase price paid is subject to attachment, 114 C 79
——effect of such attachment as concerns right of vendee to carry out contract, 114 C 79
purported conditional sale *held* chattel mortgage with retention of possession and invalid against attaching creditors, 116 C 487
"trust receipt" of cars, *held* not chattel mortgage, and whether consignment or bailment, cars not subject to attachment by creditors of bailee or conditional vendor, 116 C 487
P, conditional vendor, replevied car from A, who attached it as creditor of conditional vendee's mother; contract not executed or recorded as required by statute; *held*
——as A's attachment was not in action against one having attachable interest in car, he cannot invoke statute, 117 C 159
——P not guilty of connivance in securing default or of bad faith in recording contract after attachment, 117 C 159
sale of stock and good will of mercantile business was accompanied by incidents necessary to make it good against attaching creditor of vendor, 117 C 695
of property in possession of conditional vendee, 122 C 28
where plaintiff caused cars to be registered in wife's name to avoid attachment, he could not assert superior right to possession, as against attaching creditor, growing out of his own fraud, 128 C 506
——that he kept sufficient property in own name and in visible possession to satisfy creditors, nil sig., 128 C 509
creditor who attaches property cannot ordinarily hold it against one having equitable title unless he has given credit in reliance upon apparent title, 128 C 508
creditor of conditional vendee attaching goods sold can only claim rights of latter and is limited by conditions of conditional sales contract, 129 C 229
——conditional vendor could prevail against attaching officer where vendee was in default and officer did not tender unpaid balance of purchase price, 129 C 229
finding that automobiles were attached as property of conditional vendee, though there were other defendants in the suit, supported by evidence, 129 C 514
——attaching creditors were in position to claim that conditional sale contract did not properly state conditions of sale and that it was absolute sale as to them, 129 C 514
obligation for which tax warrant was issued was not incurred in reliance on any apparent ownership of debtor in alcohol which was attached, and where title had not passed to it attachment could not stand, 129 C 655
——nor were there circumstances which equitably subordinated right of unpaid seller to recover alcohol to claim of state for taxes, 129 C 655

§ 5. Officer's Receipt

receiptor may deliver to debtor, after lien expired, without demand, K 41
action on, need not aver that judgment is unsatisfied, 1 R 92
promise in nature of, after execution levied, 1 R 140
——declaration on, need not allege that goods were posted, 1 R 140

——nor that judgment is unreversed and unsatisfied, 1 R 140
receiptor liable, though execution be otherwise satisfied, 1 R 382
unexecuted accord no bar to action on, 1 R 426
receiptor not liable unless demand made within sixty days, 1 R 483
delivery under, how affected by reversal of judgment, 2 D 370
——receiptor liable only for fees on execution, 2 D 370
receiptor placing goods in hands of another has constructive possession, 3 C 160
some interest in the property is necessary to maintain action on, 3 C 265
plea that judgment has been paid in another execution, sufficient, 3 C 265
who is "proper officer" named in receipt, 13 C 517
officer has right to demand delivery at any time, 13 C 519
if obligatory when given, officer entitled to sue at any time, though writ never returned, 13 C 519
valuation in receipt conclusive on the parties, 13 C 521, 39 C 481, 44 C 97
receiptor not liable for depreciation in his hands without neglect, 13 C 522
——nor estopped from claiming property as his own, 13 C 522, 33 C 186
amount officer commanded to attach has no bearing on damages, 13 C 523
creditor not affected by release of property, on receipt, 16 C 545
——payment in full by receiptor is no excuse for officer's failure to produce property for second attaching creditor, 16 C 546
——rule of damage in such case, is the actual damage incurred, 16 C 548
——good defense that property was not debtor's, 16 C 547
in action on, record in original suit admissible, 20 C 494
officer not bound to detail his directions to receiptor, 20 C 495
no excuse for nondelivery that it was not property of debtor though so attached, 24 C 489
necessity of demand is determined by terms of receipt, 27 C 266
if demand necessary, no claim can be made on deceased receiptor's estate until demand made, 27 C 267
receiptor not liable for return of goods to debtor until demand, 27 C 267
lien expired; receiptor still bound to deliver; exceptions, 28 C 261
debtor testifies that goods were receiptor's; jury to decide title, 28 C 263
——title not affected by proof of fraudulent conveyance, 28 C 263
by operation of law, is contingent, 31 C 562, 33 C 186
——though absolute in terms, and whether under seal or not, 33 C 186
receiptor can defend if officer's liability to both creditor and debtor has ceased, 31 C 563, 33 C 186
contract of suretyship in, favored in law, 31 C 565
insolvency of debtor; action by trustee in officer's name; defense; damages, 31 C 568
sum named in is not necessarily decisive as to jurisdiction, 32 C 206
——is a penalty for return of goods or payment of their value, 32 C 206
recital in sealed receipt, "attached as property of A," no estoppel, 33 C 186
by creditor; insolvency; action on receipt; set-off, 35 C 6
receiptor not discharged by bankruptcy of debtor after demand, 36 C 467
——though attachment made within four months, 36 C 467
if levy prevented solely by refusal to deliver, receiptor cannot take advantage of it, 36 C 467
not a mere contract of indemnity, 36 C 468
officer has immediate right of action on refusal to return, 36 C 468
——irrespective of whether property is needed for the payment, 36 C 468
how obligation of receiptor may be discharged, 36 C 468
receiptor cannot deny that there was a valid attachment, 39 C 479, 45 C 503
partnership effects attached for debt of one partner, 39 C 480, 43 C 510
——receiptor estopped to show that partner had overdrawn, 39 C 480, 43 C 510
——or that assets were insufficient for firm debts, 39 C 480, 43 C 510
——even in equity, though debtor transferred title to receiptor, 43 C 510
statute denying right of appeal in action on, is repealed, 41 C 482
validity of, not dependent on title in debtor, 43 C 511
——nor affected by fact that officer never attached the property, 44 C 95
——aliter, if receipted within sixty days of insolvency, 44 C 290
several receipts at same time by same party for same property attached on several writs, 44 C 98
——do not constitute merely one bailment, 44 C 98
——though different value fixed in each, 44 C 98
receiptor not liable if property returned to owner and not legally attachable, 45 C 134
difference between giving a receipt and a bond, 45 C 357
where officer is not accountable for property either to creditor or owner, he cannot recover on, 50 C 375

demand for and failure to produce goods fixes receiptor's liability, 73 C 446, 84 C 341
estoppel of receiptor; time of making demand; burden to prove satisfaction of judgment alleged as a defense; oral agreement that receiptor is to be liable only as director of corporation, 79 C 333
on officer's receipt goods must be delivered or payment made, 84 C 341
surety on receipt is a debtor to attaching creditor, 87 C 99
surety's liability contingent; begins when receipt signed, 87 C 99
mere willingness to turn over property not sufficient delivery, 87 C 323
——duty to redeliver, 87 C 327
discharged by surrendering property; can then set up a claim for it, 90 C 570
receiptor cannot deny ownership of property or collaterally attack judgment, 92 C 139
receipt not against public policy, 92 C 140
receiptsman discharged unless execution taken out within time prescribed by statute, and property released, 107 C 300
——property held under, is liable to further attachment or claim of purchaser for value, even though prior attachment is known, 107 C 300

§ 6. Dissolution

lien dissolved, if property is returned to debtor's possession, 7 C 273
lien lost by neglect to pursue, 9 C 416
dissolution of, by agreement; failure of consideration; equities, 9 C 416
lien not dissolved by allowable amendment of writ, 13 C 54
withdrawal of suit dissolves lien, 14 C 186
lien created by, dissolved on death of debtor, 14 C 435
lien created by, dissolved sixty days after judgment; officer cannot then recover the goods, 37 C 594
——officer recovers only when liable over, 37 C 593, 50 C 375
nonsuit afterwards set aside at same term does not vacate, 52 C 18
attaching creditor whose attachment is dissolved under statute has lien for costs, 56 C 100
——property must be first applied to pay such costs, 56 C 100
effect of receivership proceedings against a Connecticut corporation here on attachment in another State, 71 C 345
dissolution by death of defendant, dissolution of corporation defendant, receivership proceedings, 73 C 152
death of insolvent after judgment does not release attachment; before judgment, does, 85 C 573, 88 C 100, 90 C 323
dissolution of attachment of insolvent's property within sixty days applies to estate of deceased as well as living persons, 90 C 323
statutes whereby existing attachments are not dissolved ipso facto by death perpetuate them, subject to dissolution, 90 C 323
no dissolution if made more than four months before bankruptcy, 92 C 12
application to dissolve, a distinct action, 92 C 682
order of dissolution is a final judgment, 92 C 682
issues on dissolution a question of fact; does not involve sufficiency of complaint, 92 C 683
voluntary release of attached property destroys lien of attachment, 94 C 567
whether attachment, made in a divorce proceeding where final decree ordered defendant to pay fixed sum in addition to weekly payment of part of income during former wife's lifetime, remained in force as security for weekly payments after payment of fixed sum, quaere, 96 C 568
is dissolved by bankruptcy only when defendant is insolvent when attachment is made, 110 C 125
——rule of fair valuation in determining that, 110 C 125
——if attachment is dissolved, no action lies on statutory bond replacing it, 110 C 125
dissolution of attachment is statutory proceeding, 123 C 377
——jurisdiction acquired only if essential conditions prescribed are met, 123 C 377
——if not, lack of jurisdiction is one over subject-matter and not over parties, 123 C 377
——court's jurisdiction cannot be conferred by consent, 123 C 377
——circumstantial defect will not destroy jurisdiction, 123 C 377
——it can be waived if no appeal taken from judgment, 123 C 377
——lack of service of notice of application on officer circumstantial defect in case of attachment on real estate (otherwise for personalty) 123 C 377
——jurisdiction not destroyed when validity of order dissolving attachment is attacked in quiet title proceeding, 123 C 377
service of application to dissolve on only one of attorneys of plaintiff in attachment suit not objectionable as not fairly complying with statute, 123 C 377
judgment dissolving attachment recorded on land records not invalidated by failure of judge to certify doings on application and return it with bond and other proceedings to court, 123 C 377

§ 7. Bond

no ground for abatement, that plaintiff's bond only is given on writ of attachment, 2 D 227

bond, in lieu of attachment; damages, value of property at time bond was substituted, 45 C 356
tax collector cannot set off unpaid salary against unpaid taxes, in suit on bond, 51 C 172
bond substituted for attachment in suit for conversion admissible to show fact of judgment in action on report of committee in original suit, 53 C 460
——but not value, obligors not being parties, 53 C 460
dissolution by the substitution of a bond is a strictly statutory proceeding, 58 C 434
dissolution and bond under statute involves fact of attachable interest on the part of defendant, 58 C 434
——a statement in the bond that the property of the defendant had been attached is an admission of such interest by the obligors, 58 C 434
——in an action on the bond such an admission works an estoppel, 58 C 434
——the admission in the bond *held* not qualified by officer's return that he had found the property in defendant's possession, 58 C 435
interest of original defendant in property attached presumed to be that of a full owner in absence of evidence to the contrary, 58 C 436
——but in a suit on a bond under statute obligor may reduce value by showing limited interest, 58 C 436
——but cannot show that original defendant had no interest, 58 C 436
——statute applicable "to pending actions," not made inapplicable merely by omission of such provision in Revision, 58 C 438
under statute the presumption is that the value at the time of attachment, and on the giving of a bond is the same, 58 C 437
liability of surety's for wrongful attachment by constable, 68 C 1
substitution of bond for attachment, 72 C 159
bond substituted; admissions by its recitals; mistake in memorandum of recognizance; damages, 74 C 170
dissolution of attachment by substituting bond where goods attached were held under conditional sale, 79 C 572
attachment bond not invalid by subsequent bankruptcy, 84 C 331, 90 C 507
defendant could plead bankruptcy as surety was not a party, 84 C 331
nature and effect of attachment bond, in common-law form, 84 C 334
bond good against one of two defendants though he had no interest in property attached, 85 C 83
obligation is the value of defendant's interest in property, 85 C 84
attachment bond; officer need demand only amount named in execution, 86 C 615
surety not excused by failure to levy execution, 86 C 615
an allegation that obligor had little interest in attached property, *held* explanatory of surety's liability, 86 C 616
common bond given to release attachment does not stand in place of the attachment, 90 C 507
attachment bond gives new security; not dissolved by bankruptcy, 90 C 507
attachment bond good even if no valid attachment made; but otherwise, if it follows statutory form, 91 C 129
death of one of two principals and failure to summon personal representative does not prevent recovery against other parties on bond, 91 C 342
a dropped principal is not released on an attachment bond, 91 C 342
on attachment bond, parties should be heard as to whether attachment was good, 91 C 343
by agreement any form of bond may release attachment, 94 C 91
joint and several bond conditioned for payment of any judgment against them applies to judgment against one, 94 C 91
such a bond will be construed to effect intent of parties as disclosed by fair import of language, 94 C 91
when bond accepted, attachment disappears, 94 C 94
statutory bond a substitute for property attached; whatever destroys attachment, destroys bond, 95 C 551, 104 C 280
attachment bond may be given voluntarily or under judicial order, 95 C 551
——actual value of defendant's interest measures limit of liability, 95 C 713
if bankruptcy of defendant ensues in four months, obligation of statutory bond is destroyed, 95 C 552
practice is to grant motion to dissolve attachment and substitute bond as of course, if surety and amount are sufficient, 95 C 555
actual value of defendant's interest measure of liability, 95 C 713
——if defendant had already sold property to corporation he had organized to take over his business, for stock at its true value, surety not bound, 95 C 713
finding that there was a substitution of a later bond for the first, conclusive, 96 C 469
payment made by company insuring defendant's liability made to plaintiff enures to benefit of surety on attachment bond, 97 C 8
——if bond fixes amount of liability and payment exceeds it, surety discharged, 97 C 8
effect of bond given to release attachment, 97 C 20

where common-law bond is conditioned on payment of any judgment recovered, recovery of judgment is condition of surety's liability, 101 C 26
——if principal goes through bankruptcy neither general nor special or limited judgment can be given against him, 101 C 26
if in statutory form, released by an insolvency and bankruptcy which would have discharged attachment, 101 C 541
——even though bond for amount less than directed to be attached, 101 C 541
subrogation of surety on attachment bond to right of principal (indorser of note) against maker, 101 C 736
——right of maker to set off another note made by indorser, 101 C 736
statute de substitution of attachment bond construed; judge must order judgment for plaintiff if order for bond not complied with, 102 C 310
surety on bond cannot have order for new bond vacated upon showing that principal has fled jurisdiction, 102 C 310
in action against surety, burden of proving principal's interest is on defendant, 102 C 684
bondsmen cannot complain that "actual value" of property may exceed what creditor would have obtained on execution sale, 102 C 684
principal and surety estopped to deny validity of attachment, 102 C 684
"actual value" of property is its value unaffected by equities not good against attaching creditors, 102 C 688
when garnishment released by bond, demand on surety within sixty days after judgment is prerequisite to liability, 104 C 280
in action on bond given to release, burden is on defendant to prove interest of principal in property attached is less than amount of attachment, 109 C 362
——that materials have been furnished for which lien might be filed not enough in itself, 109 C 362
——nor that certain materialmen had settled claims at a discount, 109 C 362
if attachment is dissolved, no action lies on statutory bond replacing it, 110 C 125
——when bankruptcy dissolves attachment, 110 C 125
irregularities in execution of bond in replevin action are ground for plea in abatement, 111 C 112
——but jurisdiction is not affected by them and they may be waived, as by application for new bond, 111 C 112
failure to inventory cannot be set up as defense where defendant's request to substitute a bond was cause of it, 112 C 370
defendant *held* estopped by terms of bond to deny that there was a valid attachment, 112 C 370
where payment of compensation was discontinued *held* that claimant might take out execution at any time before period ended and recover on attachment bond, 112 C 370
where bond provided for payment of value of interest of plaintiff in property, court properly corrected error by substituting defendants for plaintiff, 114 C 98
recitals in bond that attachment had been placed upon property of two defendants estops either from claiming that he had no interest, 114 C 98
——but assuming burden of proof he might show limited interest, even to extent of making damages nominal, 114 C 98
bond to release attachment not ambiguous so as to require construction; *held* to be a common-law bond and not a statutory one, 127 C 354
——such a bond is a new security entirely disconnected with the attachment lien; right to sue on it is not forfeited by first resorting to levy of execution, 127 C 354
where complaint alleged nonpayment of penalty and answer admitted it, burden of proving special defense was on defendant, 127 C 355
characteristics distinguishing statutory bond to release attachment and common-law bond to pay judgment, 129 C 398
——latter, though consideration is release of attachment, creates new and independent obligation as if there had been no attachment, 129 C 398

ATTORNEY AT LAW

§ 1. In General; Admission
2. Authority; Rights; Duties; Liabilities
3. ——In General
4. ——In Court; Privilege
5. Right to and Amount of Compensation
6. Misconduct; Disbarment

See also Criminal Law and Procedure § 13; Liens § 12; Trial § 3

§ 1. In General; Admission

a woman may be an attorney in this State under statute, 50 C 134

occupies relation of peculiar trust and confidence, 52 C 71

what qualification should be possessed by, 60 C 17

new receiver should not employ same counsel as his predecessor, to investigate latter's actions, 70 C 473

nature and duties of office in general, 72 C 244, 74 C 700, 80 C 147

stranger to suit may provide counsel, 76 C 132

qualifications, admission, procedure to secure, and appeal generally, 79 C 46

origin of attorney's oath, 79 C 50

trustee liable for his attorney's negligence, 95 C 148

rules cannot be entirely disregarded in favor of litigant who conducts his own cause, 103 C 745

that professional man, as doctor or lawyer, discharged his full duty, is presumed, 105 C 436

reliance upon advice of counsel as justification for action, 107 C 294

necessity of approval by bar and procedure considered, 111 C 47

——on application to court, question is whether applicant was dealt with fairly, not of his qualifications for admission, 111 C 47

——finding that committee of bar and bar acted fairly and without prejudice upheld, 111 C 47

admission to bar; rule requiring bar examining committee to certify to court names of those who have been admitted to and passed examinations presupposes they were properly admitted, 116 C 409

——cannot be construed to apply to other candidates than those properly admitted to and who have passed examination, 116 C 409

committing to committee power to determine educational qualifications of candidates for admission to bar is not unlawful delegation of judicial power, 116 C 409

——from earliest time it has been uninterrupted practice for court to rely on bar as to such matters, 116 C 409

admission of attorneys to practice is function of judicial department, and over their admission court should maintain oversight and control, 116 C 409

——does not follow that all proceedings by which admission is obtained are judicial acts, 116 C 409

purpose of regulation of admission is to assure courts of advocates of ability, character, etc., 116 C 409

proceedings for admission are not actions at law; they are investigations by court; are administrative in nature, 116 C 409

bar examining committee did not exceed powers or act unreasonably in approving same schools as American Bar Association approves, 116 C 409

where petitioner at time he commenced studies knew the evening classes he attended were not approved, no hardship was imposed on him by operation of rule, 116 C 409

where committee did not know petitioner's studies were confined to evening school they did not waive the requirement of study in approved law school by allowing him to take examination, 116 C 409

——waiver cannot be established by a consent given under mistake of fact, 116 C 409

membership in bar as property right, 123 C 537

attorneys' fees not recoverable as item of damage unless allowed by statute or contract, 126 C 359

allowance of attorneys' fees in receivership for services in defending corporation in receivership action, 127 C 35

admission without examination of attorneys of other states; under votes of bar examining committee de approved law schools, plaintiff not entitled to certificate, 127 C 475

——power of committee over qualifications of candidates, 127 C 477

town clerk unlawfully practiced law within meaning of statute in issuing certificate of title stating her opinion as to its validity, 128 C 325

——not authorized to act by statute requiring savings bank, before making mortgage loan, to obtain certificate of title issued by some person approved by it, 128 C 325

petition for new trial based on negligence of party's attorney in preparing case, 129 C 38
——equity will not relieve against operation of judgments rendered through negligence of party or attorney, 129 C 38
——that attorney was grossly or inexcusably negligent, nil sig., 129 C 39
inexcusable negligence of attorney does not take him out of rule imputing knowledge of agent to principal, 129 C 43
law and procedure with respect to admission of attorneys to bar since 1708, reviewed, 129 C 51
rule concerning admission of attorneys of other States without examination, 129 C 51
——requirement that applicant "intends to practice law in this state" means that he intends to do so for a substantial portion of his time, 129 C 51
——where primary motive of applicant was to participate in trial of particular negligence case without definite plan for permanent practice here, application properly denied, 129 C 55

§ 2. Authority; Rights; Duties; Liabilities

§ 3. ——In General
has no general authority to accept service of process, 1 R 407
liable for negligent failure to collect claim, 3 D 396
——loss of note is not necessarily loss of debt, 3 D 396
has no lien on a judgment to prejudice of third parties, 5 D 165
assignment of judgment to, prevents set-off of adverse judgment, 5 D 165
general powers and duties of, at common law, 4 C 522
nature of attorney's lien on client's judgment, when a set-off is claimed, 7 C 223
may enforce his lien on a judgment, when, 12 C 446, 51 C 106
——character of his lien on client's papers, 12 C 446
lien of, on client's judgment, is subject to judgment debtor's right of set-off, 17 C 113
——assignment of judgment to, cuts off debtor's right of set-off, 17 C 114
not liable for a default, if there be no valid defense, 17 C 540
assignment of debt to attorney in payment of fees and disbursements prevents set-off of a separate debt due to that debtor from the assignor, 19 C 56
if employed to prosecute suit, has no power to settle and withdraw same, 21 C 256
general authority of, 21 C 256, and cases there cited
transactions between attorney and client, closely scrutinized in equity, 26 C 219, 52 C 71
may release property attached on receiving other security, 30 C 54
whether retained by one or both plaintiffs, a question of fact, 30 C 279
——duty of, when circumstances are equivocal, 30 C 281
court does not interfere as to disputed terms of agreement of counsel out of court, 35 C 106
personally liable to officer for his fees for serving writs, 49 C 343
——unless such personal liability is expressly or clearly excluded, 49 C 345
as mortgagee not presumed to have continued knowledge of prior unrecorded mortgage, 50 C 518
——though he as attorney had drawn and taken acknowledgment of prior deed nine years before, 50 C 518
——distinction between mere casual knowledge as attorney and knowledge affecting interest, 50 C 518
has equitable lien on funds recovered, when, 51 C 106, 107
——assignee in insolvency takes assets burdened with lien, 51 C 107
——so *held* where it was orally agreed that attorney should take pay out of avails for previous services, 51 C 107, 56 C 303
the same attorney may act for several parties whose interests do not conflict, 52 C 234
——though some are classed as defendants and some as plaintiffs, 52 C 234
——aliter, where interests are antagonistic, 52 C 234, 58 C 542
——an agreement with parties that he be paid out of the proceeds of property creates a lien for charges, 56 C 303–305
——lien covers charges made in name of attorney's firm, 56 C 305
——and for services performed before and after the trust, 56 C 306
——such charges may be brought into account by executor of such trustee, 56 C 306
may submit case to arbitration by rule or direction of court, 58 C 169
——has no implied authority to submit case to arbitration by agreement in pais, 58 C 173
——or to materially change terms of client's submission .without latter's consent, 58 C 173
liable for arrest under void mittimus drawn by him, 64 C 320
imputing his knowledge to his client, 70 C 275
liability for wrongful attachment he has directed, where title to property is in dispute, 72 C 242
right of access to prisoner he represents, 72 C 728
has no authority to make admission after termination of employment, 74 C 152
negligence of, as negligence of client, 77 C 21
prima facie authority to write for itemized statement of claims and to promise payment

where satisfied of their correctness, 78 C 219
agreement that he is to take his pay out of the judgment recovered; not an assignment; his lien, 78 C 658
right to practice calling as right of property, 79 C 55
can purchase judgment and sue thereon if in good faith, 85 C 260
——not so objectionable to buy judgment as to buy an unadjudicated claim, 85 C 260
need not accept employment on contingency basis, 87 C 157
attorney who drafts deed can be agent of both parties, 89 C 36
whether client had authorized his attorney to employ another, 89 C 201
no general authority to employ associate counsel, 91 C 702
right of court to require attorney to act for unprotected interest, 93 C 596
appearance of nonresident plaintiff by attorney is sufficient, 94 C 85
client not bound by attorney's statement unless he knows and assents thereto, 101 C 92
presumption of authority to execute contract after long lapse of time, 105 C 227
conversion of note sent to attorney for purpose of certain trial by one holding it as collateral security for debt of payee, 107 C 574
——where he delivered it to payee with consent of holder's attorney conversion depends on latter's authority to consent, 107 C 574
——if he has no actual authority ostensible authority is question of fact, 107 C 574
——if payee delivers it back to his attorney and holder demands it, situation is different, 107 C 574
——right of attorney to opportunity to investigate superior right of holder, 107 C 574
——power of court in action in which it was to be used as exhibit to order its return to holder, 107 C 574
——damages; as attorney is in privity with general owner, the payee, holder can claim only actual damage, i. e. amount of debt, 107 C 574
writ of error is not abatable because attorney for plaintiff is recognized for costs, 108 C 93
subsequent employment of attorney as ratifying his acceptance of service, filing pleadings and preparing case, which he did under mistake as to his employment by insurance company, 108 C 659
attorney acting for both parties and instructed to draw deed of premises *held* not to have authority to accept deed assuming mortgages for buyer, 112 C 307
——where, after buyer's refusal to accept, he held deed, it was for seller and actual return to him not necessary, 112 C 307
attorney is not a party to the action and is not entitled to costs, 112 C 666
——has no right to execution or other proceeding against order of client even upon a lien for fees, 112 C 666
where property is conveyed to attorney to complete construction of building whose owner is in financial difficulties, duties determined upon basis of relationship of trust and not attorney and client, 113 C 429
failure of attorney to disclose that conditional bill of sale was unacknowledged not fraud, where he did not know it was void, 113 C 539
where conditional vendor failed to give instructions to attorney to redeem car seized for illegal transportation of liquor, *held* he abandoned it, though attorney redeemed in vendor's name on behalf of another, 118 C 220
——and vendor forfeited his right to reclaim, 118 C 220
attorney who prosecutes action on behalf of client involving title to or possession of real estate does not, in absence of special agreement, acquire right of lien on it, unless given right by statute, 123 C 372
——so notice claiming such lien was, upon its face, no notice of any interest in real estate affected which could be recorded under statute, 123 C 372
where matter referred to attorney with instruction to use own judgment, offer of settlement by him is within his authority, 125 C 91
general authority of attorney does not empower him, unless expressly authorized by client, to discontinue or withdraw case where ultimate rights of parties are thereby terminated, 125 C 206
where attorney made offer of settlement without authority, sending of check by principal in different amount is not a ratification, 128 C 73
attorney has no implied powers by virtue of his general retainer to compromise and settle client's cause, except in certain conditions of emergency, 128 C 223
——either precedent special authority or subsequent ratification is essential to make compromise or settlement binding, 128 C 224
——so offer of assistant corporation counsel to reduce defendant's assessment was not a legal offer without precedent authority from or subsequent ratification by city, where there was no authority in charter, 128 C 224
——his authority could not be proved by his own declarations as agent, 128 C 224
——parties charged with notice of extent of his authority, he being agent of municipality, 128 C 228

§ 4. ——In Court; Privilege

See also Criminal Law and Procedure § 13; Trial § 3

voluntary communications, if made to attorney at law, are privileged, 1 R 383, 486, 2 R 363

authority of, cannot be challenged in appellate court after appearance in court below, 2 R 348

not compellable to produce in evidence client's papers in another case, 3 D 499

——adverse party may introduce proved copy, 3 D 499

privileged communications, 28 C 175

——rule extends to interpreters, clerks, and agents in the particular business, 28 C 175

——not to other third persons, 28 C 175

waiver of counsel in criminal case is waiver of prisoner, 34 C 295

——may waive any objection, in case not capital, 34 C 295

bill of particulars, though never filed, is not a privileged communication, when, 48 C 249

attorney learning from client that he is about to commit a crime owes higher duty to society than to client, 52 C 323

——and such communication of client is not privileged, 52 C 323

——but this exception applies only where the statements are reasonable evidence of a guilty intent, 52 C 323

statement by client to attorney *held* not to mean that perjury was intended, 52 C 323

instructions of grantor to, de deed, are not ordinarily privileged, 53 C 588

has authority to agree to admit deposition "subject to objections noted" though admitting inadmissible matter, 57 C 564

should not try case in which he is material witness, 68 C 201, 72 C 437, 80 C 531, 81 C 350

nature and extent of privilege as to communications, 71 C 576, 72 C 306, 75 C 17

improper argument by an attorney may be violation of his oath, 72 C 253

should not practice in court in which he may act as judge, 72 C 437

may be compelled to produce document handed him by client, 72 C 693, 81 C 89

is not a party to the action he tries, though claiming lien on judgment; cannot file plea in abatement to appeal to protect his lien, 74 C 729

party may call adversary's counsel as witness, where reasonably necessary, 81 C 343

in action to recover fee, evidence admissible in spite of professional secrecy between attorney and client, 82 C 441

brother of judge not disqualified to practice before him, 83 C 180

unlawful to make untruthful statement to get in evidence, 84 C 60

duty in defending one accused of crime, 84 C 88

refusal to disclose to the other side weakness of evidence not unprofessional, 84 C 595

not illegal to try own case and appear as witness though such conduct may be unprofessional, 85 C 209

admissions in court are those of his client, 86 C 393

attorney who drafts and attests instrument for client now dead is bound to testify as to circumstances, 89 C 290

privilege can be claimed only for benefit of client and his estate, 89 C 290

not to be witness in case he tries, 97 C 529, 708

nonresident attorney may not sign Supreme Court brief, 98 C 362

only Connecticut attorneys may sign pleadings or briefs, 99 C 250

——those of other States will be permitted to argue cases, 99 C 250

effect of rule forbidding attorney to testify, as regards claimed admission from his failure to contradict statement made in his presence, 99 C 583

effect of admission by counsel during trial; should not be accepted when obviously mistaken, 105 C 679

letter of attorney containing alleged statements of client inadmissible unless authorized or ratified, 105 C 710

should not be both advocate and witness, 107 C 491

——should get other counsel to try case where it appears that he will become a material witness, 107 C 491

——not enough merely to leave active conduct of case to partner, 107 C 491

——but violation of rule not ground for new trial, 107 C 491

where witness was asked if counsel had not suggested to him on his trial for a crime that it could be disposed of if he would place blame on accused, now on trial as principal in it, state's attorney could suggest that witness might claim matter privileged, 108 C 53

——though privilege was personal to witness, 108 C 53

——discretion of court to give witness time to determine whether he will assert privilege, 108 C 53

duty to co-operate with court and clerk to abridge record for appeal, 108 C 659

where client dies after hearing but before judgment, attorney has no authority to appeal, 110 C 649

——attempted appeal is a nullity, 110 C 649

attorney ordinarily cannot testify as to communications from client, 112 C 521

——this includes instructions as to drafting papers, as will, and contents of papers drafted, 112 C 521

——but privilege as to will does not hold after client's death in suit between devisees named in it and heirs, 112 C 521
——rule includes one attorney consulting another, 112 C 524
——effect of privilege as creating exception under statutes concerning declarations of deceased persons, 112 C 521
attorney who has severed connection with case and with counsel not disqualified as witness, 113 C 457
attorney at instigation of court secured release of juryman from engagement with client; *held* court properly denied motion for mistrial, 113 C 457
privilege growing out of relationship of attorney and client does not obtain where former is merely scrivener in drafting deed or like instrument, 114 C 226
where legal advice is sought from attorney, communications relating to it made in confidence are at his instance privileged from disclosure unless privilege be waived, 118 C 284
——this rule does not include report as to accident made by motorman to street railway company even though for purpose of preparing against future litigation, 118 C 276
attorney should not be witness in trial of case in which he is counsel, unless necessary to prevent injustice when emergency arises in course of trial, 120 C 367
——but he is not under legal disqualification and most court could do would be to remind him of impropriety of conduct, 120 C 367
——so court's refusal to admit his testimony on motion for new trial was error, but harmless since new trial should not be granted anyway, 120 C 367
rule against attorney being witness in case he tries includes testimony taken by deposition, 120 C 372
communication to attorney relating to formation of corporation and preparation of papers where claim was that his client used corporation to secure fraudulent conveyance is privileged, 122 C 465
when counsel becomes witness for client in same cause on material matter and not in emergency but with knowledge that he would be required as witness in time to relinquish case, he violates important rule of professional conduct, 123 C 331
——but such impropriety is matter of etiquette and not one of strict law, and he is not legally disqualified or rendered incompetent to testify, 123 C 331
——offer of attorney to testify *held* ethically improper but exclusion was erroneous, and as testimony might have been material, new trial was ordered, 123 C 331
attorney may not disclose communications by client under confidence, in action brought against client's estate by third party, 126 C 383
no privilege exists as to documents coming into possession of attorney in his capacity as executor, 126 C 383
as to documents coming into his possession while relationship existed, but not incident to confidential relationship, privilege no greater than would have been that of client, 126 C 383
documents in themselves confidential communications between attorney and client or those coming to former as incident of confidential relationship are privileged; production cannot be compelled from attorney after decease of client, 126 C 383
attorney should co-operate in court's efforts to ascertain any objections to charge, during and after delivery, 129 C 123
——but no statute or rule of court requires exceptions to charge to be taken at time of delivery, 129 C 123
attorney employed to conduct suit has no implied authority to make statements not involved in conduct of litigation, 129 C 399
——but where claim is given attorney for collection, he is impliedly authorized to state to debtor what claim is, 129 C 399
——statements made by plaintiff's attorney in letter to defendant outlining claim were prima facie within scope of employment and admissible against client, 129 C 399

§ 5. Right to and Amount of Compensation

fraudulent conduct of, bars claim for services, 4 C 525
in suit by, for services, on a quantum meruit, his professional standing may be inquired into, 40 C 101
——as to amount of business done, and income, 40 C 101
where appointed trustee of mere naked trust his relation as attorney and client was regarded as continuing, 56 C 303
——may charge for his professional services, 56 C 303
request of clients to take pay out of proceeds of sale of property is a request for delay, 56 C 306
——a good ground for charging interest, 56 C 306
allowing one counsel fee where four appeals taken but one record printed and one case argued, 74 C 274
in action to recover fee, evidence admissible in spite of professional secrecy between attorney and client, 82 C 441
attorney's charges matter of opinion; extortionate when oppressive or illegal, 84 C 595
contingent fee of 50 per cent not unfair; not to be encouraged, 84 C 595

can recover what services are reasonably worth, with interest, 86 C 346, 87 C 157
one cannot refuse to compensate an attorney for his work if he knew of his employment, 91 C 702
where court has power to allow reasonable attorney's fee it may refuse to allow any, 104 C 504
——how question presented for review, 104 C 504
in action for attorney's fees, burden is on defendant to show negligence, 105 C 436
attorney not an insurer of his work; standard of duty explained; breach of duty is question of fact, 105 C 436
attorney entitled to compensation for his services, though not strictly professional in nature, 105 C 436
standing at bar, volume of business, and usual fees, are relevant on issue of reasonable value of services, 105 C 436
New York attorney who practices in Connecticut may give opinion as to value of Connecticut attorney's services, 105 C 437
equity will cancel mortgage for fees obtained by attorney through duress from ignorant and illiterate client, who is in great fear, 107 C 229
relationship with client one of great trust and confidence; will be carefully scrutinized; every presumption will be drawn in favor of client, 107 C 229
where attorney lost on trial but won on appeal and other attorneys then retried case and won it, value of former's services must be determined in light of services by latter, 107 C 381
——contract for contingent fee not illegal but to be closely scrutinized and void if extortionate or unfair, 107 C 381
——contract for 60 per cent extortionate and void, one for 50 per cent could stand only if it covered all legal services by all attorneys engaged in case, 107 C 381
——expert testimony as to value of services to be weighed in light of court's knowledge of subject, 107 C 381
effect of presumption in action for services that he has properly performed his duty, 113 C 488
where attorney procures from ignorant client a mortgage to ensure payment of fees and mortgage is judicially declared invalid, no actual fraud being shown, he can recover on quantum meruit for value of services, 119 C 251
——$10,000 award sustained for defense in murder trial and services in civil suits, 119 C 251
relationship with client imposes certain duties which impliedly enter into the contract, 119 C 405
entitled to compensation where never discharged as attorney and continued work and efforts brought final settlement, though another attorney engaged, entered appearance, and settlement draft made to him, 123 C 332
in dealings between attorney and client, transaction to be scrutinized with great care, 126 C 154
testimony of experts as to value of legal services rendered in eminent domain case, not binding on court, which could use its general knowledge, 126 C 155
attorney not prohibited from contracting with client respecting his fee; such contract not void but by reason of confidential relationship will be closely scrutinized; will be sustained if fairly made and no unconscionable advantage taken, 127 C 387
if no contract between parties as to fee, attorney entitled to reasonable value of services; not restricted to amount he actually retains, 127 C 388
attorney is an officer of the court and entitled to fair compensation for services, 128 C 224
where attorney employed on contingent basis, question discussed whether there is implied term of contract that he will have reasonable opportunity to perform and if he is prevented by wrongful discharge contract is broken and he can recover what he probably would have earned, 128 C 228
——minority rule adopted here, that he should only receive reasonable compensation for work done up to time of discharge, 128 C 230
——client may discharge attorney even without just cause, 128 C 230

§ 6. Misconduct; Disbarment

may be sued for fraudulently appropriating funds, 52 C 71
——though a contract may be implied, 52 C 72
——copartner need not be joined in the suit on tort, 52 C 72
——complaint for, *held* sufficient under Practice Act, 52 C 71
an attorney secretly acting for both sides and making false representations, *held* guilty of fraud, 58 C 548
Superior Court alone can admit persons to bar, and can alone totally displace or suspend, 60 C 12
——other courts may fine an attorney and forbid his appearing before them, 60 C 12
no statute or usage authorizes an appeal from an order of the Superior Court displacing or suspending, 60 C 12
——committee preferring the charges need not prove their appointment by the bar, 60 C 14
——such a committee is not a party in any proper sense, 60 C 15

course of procedure in cases where unprofessional conduct is charged, 60 C 14
——record of case establishing attorney's fraud admissible on the hearing, 60 C 15
conduct of attorney *held* to justify his permanent disbarment, 60 C 16
power of court over; causes for and procedure to secure removal; appeal, 66 C 585, 80 C 140
liability for collecting money and converting it to his own use, 66 C 585
receipt of large lump sum from administrator no evidence of its wrongful use, 75 C 306
agreement to bear expense of suit and to receive one-half of any judgment recovered is against public policy, 77 C 458
great discretion allowed in passing on misconduct; reviewable, 84 C 594
statement to client that he could obtain large damages not necessarily unprofessional, 84 C 595
instruction to client not to settle a claim is lawful and professional, 84 C 595
contract with a minor voidable; if corrupt, illegal; can recover reasonable fee, 84 C 595, 610
in disbarment proceedings, the question is not whether client is entitled to return of portion of fee but whether attorney should be suspended for charging such sum, 84 C 595
offense charged may be presented by grievance committee, state's attorney or a member of the bar, 84 C 603
attorney who persistently violates rulings and suggestions of judge should be displaced or disbarred, 88 C 149
misconduct that is grounds for disbarment, 88 C 447
disbarment of judge of probate does not affect judicial status, 88 C 447
disbarment not criminal or civil proceeding, 88 C 447
court can institute disbarment on its own initiative, 88 C 448
whether Supreme Court can review evidence in disbarment proceedings to ascertain whether it supports finding, quaere, 88 C 448
whether attorney is fit person, one of judicial discretion, 88 C 448
function of state's attorney in disbarment proceedings, 88 C 448
attorney charged with misconduct entitled to notice, 88 C 449
power and functions of grievance committee, 88 C 456
reinstatement of attorney discretionary, 90 C 440
order of suspension for indefinite period not objectionable, 90 C 441
advice of attorney as justifying client in instituting prosecution, 105 C 177
where lawyer drawing will is charged with undue influence, burden to disprove it rests on him, 108 C 572
disbarment; discretion of court reviewable; misconduct indicative of moral unfitness, whether professional or nonprofessional, justifies dismissal, 112 C 263
adultery of respondent *held* an infamous crime and indicative of moral unfitness for the profession, 112 C 269
nature of appeal in disbarment proceedings, 112 C 272
——function of grievance committee, 112 C 272
——duty of state's attorney, 112 C 272
——purpose of procedure is not punishment but protection of public, 112 C 272
——appeal may be taken from refusal to disbar as well as from disbarment, 112 C 272
——discretion of trial court, 112 C 272
forfeiture of rights as elector to be considered, 112 C 277
——causes which would prevent admission as attorney are grounds of disbarment, 112 C 271
equity will scrutinize with great care mortgage given to attorney by ignorant and frightened client; doubt will be resolved in favor of client, 119 C 251
——in present case finding of no actual but only constructive fraud sustained, 119 C 251
nature of disbarment proceedings; defendant or state's attorney may appeal; is "civil proceeding" within bribery statute, 122 C 635
disbarment proceedings; ultimate question whether defendant is fit person to be allowed privileges of being attorney, 128 C 419
——action of court not set aside on review unless it clearly appears rights have been substantially denied him, 128 C 419
where attorney directed officer to attach property and on replevin by conditional vendor directed him to refuse to surrender it there was legal inference of promise by attorney to reimburse officer for loss, 128 C 420
——court not in error in suspending him from practice for sixty days for failure to reimburse officer for judgment against him for nominal damages and costs, 128 C 420
disbarment proceedings not criminal or civil action, 128 C 420
——complaint not required to comply with usual technical requirements, 128 C 420
——not necessary to allege all details brought out at the trial, 128 C 420
while court could not base disbarment or suspension on finding that attorney gave false testimony at hearing without charges being brought based on it, it could consider this fact in determining the penalty, 128 C 420

ATTORNEY GENERAL

may enforce charity by suit for injunctive relief, 102 C 410

duty to protect interests of beneficiaries of charitable trust, 106 C 582

duty as regards petiton of citizens for removal of public utility commissioner, 111 C 634

in action to compel him to begin proceedings for removal of public utility commissioner, his application after appeal to contest issue of fact not raised on first trial was in effect petition for new trial, 112 C 586

——sufficiency could be determined only on demurrer, not motion to dismiss, 112 C 586

——meaning of requirement that allegations of proceedings be not "manifestly untrue," 112 C 586

——attorney general must bring proceedings unless after elimination of those manifestly untrue petition is clearly insufficient, 112 C 586

where trust not of public or charitable nature, no purpose of making attorney general party defendant in suit to terminate it, 125 C 649

——his presence as party does not afford adequate representation for unborn issue of plaintiff, 125 C 649

AUDITA QUERELA

See Andrews and Fowler, Maltbie and Townshend Digests

AUDITORS

See Committees and Referees

AUTOMOBILE

§ 1. In General
2. Sales; Repairs
3. Registration and License
4. Operation
5. ——In General
6. ——Statutory Provisions Generally; Miscellaneous Statutes and Regulations
7. ——Speed and Control; Skidding
8. ——Lights; Brakes; Equipment
9. ——Street Intersections
   (1) In General; Definitions
   (2) Turning; Keeping to Right
   (3) Right of Way
   (4) Approaching and Entering; Traffic Signals
   (5) Miscellaneous Cases
10. ——Meeting Vehicles and Persons Coming from Different Direction
11. ——Passing and Overtaking
12. ——Collisions with Stationary Vehicles
13. ——Stopping, Backing and Turning
14. ——Entering Highway from Private Way or Property
15. ——Reckless Driving
16. Injuries to Persons on Foot
17. ——In General
18. ——Crossing Street
19. ——Getting On and Off Vehicles
20. ——Walking along Highway
21. ——On Sidewalk or Near Highway
22. ——Workmen
23. ——Children

§ 1 Automobile

24. Passengers; Guests
25. ——In General; Liability of Driver; of Third Party
26. ——Duties of Passenger or Guest; Contributory Negligence; Assumption of Risk
27. ——Guest Statute Generally
28. ——Persons within Statute
29. ——Particular Cases under Statute
30. Negligent Operation by Another
31. ——In General
32. ——Family Car Doctrine
33. Procedural Matters
34. ——Pleading
35. ——Evidence
    (1) In General; Sufficiency
    (2) Admissibility
36. ——Damages
37. ——Actions; Miscellaneous

Note: Cases concerning liability of owners of motor vehicles which are common carriers for injury to passengers are listed under Carriers § 7; those involving particularly the principles of agency are listed under Master and Servant § 9.

See also Assumption of Risk; Charge to Jury § 16; Criminal Law and Procedure; Driving under Influence of Liquor; Highways; Negligence; Sales § 20

§ 1. In General

power of Legislature to establish standard of care, 83 C 503

injured car the custody of which A has not accepted does not make A bailee, 92 C 702

if weight and size of truck are lawful, they are immaterial as regards damage by breaking in of drain in highway, 94 C 538

loan of automobile; obligation of owner to disclose defects, 95 C 251

——guest of borrower occupies no more advantageous position than borrower, 95 C 251

power of public utilities commission to regulate jitneys and right of appeal, 97 C 453

regulation of "jitneys," licensing and control by public utilities commission upheld, 97 C 728

——penalty for violation "of any order, rule, or regulation adopted or established under the provisions of this act or any provision hereof" construed, 97 C 729

use of automobiles as affecting duty of authorities to keep highways reasonably safe, 105 C 363

regulation is within police power of State, 108 C 333, 371

——drivers may be classed apart from drivers of other vehicles as to duties and liabilities, 108 C 371

——limitation of liability to guest to intentional heedless or reckless acts, sustained, 108 C 371

insurance policy excluding operation of automobile "in violation of law as to age" *held* not to cover operation in violation of statute fixing age limit, 108 C 598

under act of 1929 sentence on conviction for driving under influence of liquor cannot be suspended or accused put on probation, 111 C 281

forfeiture of car used for transportation of liquor; exception cannot be made in favor of innocent owner or conditional vendor; proceeding is not criminal but one in rem, 112 C 618

the crimes of theft of automobile and operating one without consent of owner are distinct, 113 C 103

——conviction of second not permissible under information for first, 113 C 103

forfeiture of car used for transportation of liquor where title is in conditional vendor, 113 C 765

right of State to authorize traffic commission of city to establish taxi stand in connection with hotel, limiting its use to companies designated by hotel, 119 C 323 and see Constitutional Law

doctrine of accession as applied to automobiles and parts discussed and authorities reviewed, 121 C 188

——while the parts used in ordinary repairs become merged in the principal thing, equipment which is distinguishable and detachable does not merge, 121 C 190

one in possession of stolen property may not ordinarily assert any claim to it as against owner, 121 C 188
——but where he has acted in good faith he is not debarred from claiming parts added to it, as would be the thief, 121 C 188
——so where defendant purchased stolen car in good faith except engine which was installed by H and could be removed, *held* real owner of car not entitled to engine on replevin, 121 C 188
while State delegated to municipalities power to make traffic rules applying to all vehicles alike, special powers to regulate motor vehicles was retained by State, with specific exceptions noted in statute, 125 C 501
——so ordinance that no through trucks should use road which police commission should forbid and order based thereon, invalid, 125 C 501

§ 2. Sales; Repairs
See also SALES § 20

what is a sufficient order for a car, 83 C 520
what constitutes a warranty "in good and running condition," 84 C 463
when sales agent can recover commissions, on failure of purchaser to consummate deal, 90 C 481
right to rescind because car not in running condition, 91 C 185
what is acceptance of automobile, 91 C 731
statement to owner that garage will have to get others to make repairs does not make owner employer of those hired, 94 C 520
garage doing repairs responsible for entire job, even if it employs others to do work, 94 C 520
lien for repairs is ended by acceptance of compromise settlement of claim, 99 C 262
defendant sued for price may dispute claimed price and counterclaim for fraud, 100 C 393
——statement that he could not get any work out of truck admissible as statement of fact, 100 C 393
——claim that such statement is inadmissible as opinion by nonexpert, not tenable, 100 C 393
——bill paid for repairs admissible on counterclaim, 100 C 393
——allegation of plaintiff's fraudulent representations and knowledge of them allows recovery either for deceit or breach of warranty, 100 C 393
where risk of loss by destruction of automobile sold under conditional bill of sale rests, 101 C 575
——in case of absolute sale, where vendor retains possession, 101 C 575
bailee's lien for repairs on automobile superior to conditional vendor's right to retake possession, 102 C 652
——if conditional vendor pays repair bill, vendee's debt increased pro tanto, 102 C 652
no recovery allowable to repairman making automobile repairs in excess of $50 without written authority required by penal statute, 103 C 21
written authorization for repairs in excess of $50; when to be given; what to contain, 104 C 447
incomplete written authorization for repairs explainable by parol evidence, 104 C 447
conclusion that seller of truck was guilty of fraud in misrepresenting year of manufacture upheld, 108 C 511
——for measure of damage see § 36, infra
custom among dealers for seller to insure car sold on time inadmissible in action between parties not dealers to substantiate alleged agreement for such insurance, 108 C 521
if automobile wrongfully taken by replevin, owner entitled to compensation for loss of use, 108 C 524
in action for price of car sold, defective steering wheel which caused damage to car by breaking, not failure of consideration, 110 C 255
express or implied warranty may be waived, 110 C 255
——will not be found where parties agree in writing that there shall be no warranty, 110 C 255
statute requiring writing for repairs in excess of $50 not applicable where conditional vendor seeks reimbursement from vendee, 110 C 255
——owner by paying full bill presumed to have waived statute, 110 C 262
no right of action under statute against owner of automobile for repairs over $50 authorized by another who did not have possession, 110 C 449
where P damaged truck of defendants and, after they refused to sign order for repairs, P's agent signed it, though not having possession, defendants not liable under statute requiring written order for such repairs signed by owner or possessor, 110 C 451
oral statement as to year of model of used car not relied on is not a warranty, 111 C 297
——nor is similar statement in bill of sale which is merely descriptive, 111 C 297
on conditional sale contemporaneous oral agreement of vendor to turn over insurance for certain stolen parts when received, *held* enforceable, 111 C 544
in action for breach of warranty of title in conditional bill of sale, vendors may show execution of bill for accommodation of plaintiff, the buyer, to enable him to finance deal, 111 C 572
right of seller to resell car and charge buyer with difference in price, where buyer has returned it, 112 C 646

rights as between conditional vendor of car who repossessed it and seller of tires and tubes to vendee under conditional bill of sale, 115 C 187

the doctrine of title by accession does not apply to equipment not intended to be merged in structure of car and as readily detachable as tires and tubes, 115 C 187

where there is a breach of warranty a defense of good faith is immaterial, 116 C 579

right to return goods for breach of warranty is conditioned upon their being substantially as good as when sold, 116 C 579

——burden of proof on this issue is on buyer, 116 C 579

jury could have found that evidence of transfer of ownership before accident was fabricated for purpose of relieving H of liability and that he was owner of car, 126 C 584

——if transaction never took place, registration in name of H at time of accident would support conclusion of ownership, 126 C 586

——same if jury found payment not to be made and transaction consummated until after car tested and repaired, 126 C 586

upon facts absolute title to car passed to plaintiff from brother; delivery not made as security for debt. 126 C 704

where plaintiff left car in garage for repairs, removed markers of brother, from whom she bought it, locked car and took out registration in own name, not such retention of possession by brother as to subject it to attachment, 126 C 704

§ 3. Registration and License

use of unregistered automobile not unlawful unless so provided by statute; damages for defective road recoverable, 82 C 661

illegal act must contribute to the injury to be a defense; driving unregistered automobile, 82 C 663

under statute de dealer's registration, not intended that others should be able to operate cars belonging to or controlled by themselves, 86 C 412

——but dealer may undertake to sell car for another, in which case it may be operated under dealer's registration, 86 C 412

unlicensed driver must be accompanied by licensed one, 87 C 416

no one under sixteen can legally operate an automobile upon highways of this State, 88 C 309

if driver over sixteen but unlicensed, insurance company liable, 88 C 309

registration certificate is for the purpose of identification and revenue, 90 C 414

automobile falsely registered not legally registered, 90 C 412

owner of illegally registered car cannot recover, 90 C 412

State alone can license autombile; city can license right to do business, 91 C 234

one not having legal title to automobile may have special property sufficient to register same as "owner," 92 C 252

dealer, under act of 1917, need not carry certificate of registration, 93 C 454

failure to have license card with him does not make one unlicensed, 93 C 454

purchaser of car need not have registration for five days, 93 C 454

truck being pushed into garage for repairs is not being "operated" so as to defeat recovery under law forbidding it where car not registered or driver not licensed, 96 C 389

plaintiff must allege and prove car registered and driver licensed, 96 C 390

breach of law, to prove negligence, must be breach of duty owed to plaintiff or directly contribute to injury, 96 C 663

——operation of motor vehicle by unlicensed driver, 96 C 663

motor vehicle operated by driver under sixteen years of age is not an outlaw upon the highway, 96 C 663

under 1919 law, nonresident, over eighteen, licensed in own State, may operate here for thirty days and recover if injured while operating Connecticut car, 97 C 141

——so the owner of the car could recover, 97 C 141

operator and owner are treated in motor vehicle laws as entirely unrelated; license is independent of ownership and registration by owner equally independent of question of license to operate, 97 C 142

nature and purpose of registration certificate, 97 C 142

——of operator's license, 97 C 142

under 1921 law, right of commissioner to require special registration of public service motor vehicles, 97 C 239

right of purchaser from dealer to operate for five days without registration, 97 C 571

——that he made no attempt to register car will not debar recovery, 97 C 571

——even though he does not carry correct number plates, 97 C 571

statute forbidding recovery by unlicensed operator does not destroy jurisdiction of court, 99 C 530

collection of judgment obtained by unlicensed operator *held* not to be enjoined in equity; not contrary to public policy, 99 C 534

purpose of statute requiring registration, 100 C 114

new registration required with each transfer, 100 C 114

"owner" defined, 100 C 114

evidence of registration in name of partnership, later dissolved, does not tend to prove registration by one partner, 100 C 114

owner of car not legally registered in his name cannot recover for injuries, 100 C 114
——even though car was distributed to him after proper registration, on dissolution of partnership, 100 C 114
——but passenger in unregistered vehicle may recover, 100 C 122, 103 C 29
registration furnishes evidence of ownership, 102 C 66
purpose of requiring registration, 104 C 165
meaning of term "owner"; includes both legal and equitable owner and one having special title, 104 C 165
registration by chattel mortgagee and conditional vendee, 104 C 165
purpose of registration is identification and revenue, 104 C 487
license is privilege granted for personal fitness, 104 C 487
failure to indorse signature on back of license does not render holder "unlicensed person" nor defeat recovery, 104 C 487, 114 C 76
purpose of indorsement of signature, 104 C 487
whether failure to comply with provision as to registration in trade name would prevent recovery, quaere, 106 C 254
——registration raises presumption that law was complied with, 106 C 254
as regards registration one may be a resident of more than one State, 107 C 137
——meaning of provision permitting nonresident to operate without registration for a period not exceeding fifteen days, not necessarily consecutive in any one year, 107 C 137
——teacher in another State who keeps car here during a vacation at home, not a nonresident, 107 C 137
purpose of statute is for identification and revenue, 107 C 137
license issued to person under age not ipso facto void; must have been issued upon material false statement of fact, 107 C 211
false statement of fact is one made with knowledge of falsity and with intent to deceive, 107 C 211
it is presumed that commissioner "satisfied" himself that applicant for license was of legal age before it was issued, 107 C 211
statute of 1921, permitting operation by unlicensed person under "instruction" *held* to apply only to those learning to drive for purpose of getting license, 107 C 476
operation of automobile by a boy seventeen years of age not accompanied by licensed driver violated law as to age and insured not protected by policy, 108 C 598
owner of unregistered truck not deprived of recovery under statute where accident occurred on private railroad crossing after driving along private road, 110 C 147
statute imposing disability to sue on owner of unregistered vehicle applies regardless of how short the period of noncompliance after registration date; purpose of statute, 110 C 280
liability for operating unregistered car not affected by fact that officers sometimes refrain from prosecution for a day or two after expiration of license, 110 C 280
provision forbidding recovery where car not registered, applies to operation by agent though owner did not know he was unregistered, 110 C 290
——act not unconstitutional, 110 C 288
meaning of "instruction" in statute concerning operation by unlicensed driver, 110 C 358
that plaintiff was not licensed in this State does not deprive him of right to recover, 112 C 670
——nor is this fact relevant to his negligence, 112 C 670
plaintiff, resident of Massachusetts, not duly licensed there because of failure to sign license, *held* not debarred from recovery under our statute, 114 C 71
person who has lawfully obtained an operator's license, whether or not he has indorsed it, is a licensed operator, 114 C 76
purpose of law requiring registration of motor vehicles was identification and revenue, 114 C 262
——amendment of 1927 was to protect users of highway by equipment requirements, 114 C 262
——complaint not alleging negligence other than violation of statute demurrable, 114 C 262
statute forbidding loan of number plates is intended to make more effective registration statute and affords no better basis of recovery, 114 C 262
plaintiff injured by unregistered automobile bearing number plates illegally loaned defendant K by defendant R; operation in violation of statute *held* not negligence nor cause of accident nor nuisance, 114 C 262
——and statute forbidding loan of dealers' plates gives no remedy, 114 C 262
unregistered automobile in highway is not nuisance, but operator is trespasser against owner of fee, 114 C 262
——not by that fact liable for any injury he may do, 114 C 262
failure to have automobile license, inexperience and immaturity as bearing on negligence, 114 C 336
there is no causal connection between lack of license and injury occurring from operation of car, 114 C 336
statute does not directly prohibit operation by one under sixteen, but makes him legally unable to drive, 114 C 336
registration of motor vehicle as public declaration of ownership, 114 C 523

——where vendee left it in building where vendor had kept it but registered it in his own name, doctrine of retention of possession *held* not to apply, 114 C 523
statute providing that unlicensed person may drive while under instruction by licensed operator who has full control of vehicle; *held* legislative affirmance that unlicensed person so operating not so incompetent that general safety requires he be kept off highway, 116 C 515
something more required to fix liability upon owner than that operator was unlicensed and inexperienced, 116 C 515
registration of truck in defendant's name sufficient evidence of ownership in year it was so registered, 119 C 307
registration is public declaration of ownership, 126 C 706

§ 4. Operation

§ 5. ——In General
right and duty in general in the street, 81 C 501
failure to stop for frightened horse, 83 C 503
intoxication of automobile driver does not necessarily preclude recovery, 89 C 401
car standing in street *held* to be in operation, 90 C 412
concurring negligence and last clear chance doctrine, 90 C 701, 94 C 201, 95 C 431, 466
bicyclist must exercise ordinary care to avoid or discover dangers or conditions of danger, 90 C 702
right to assume that others will use proper care; third person injured by collision of two vehicles, 92 C 594
negligent to voluntarily select a dangerous place to change tires, 94 C 201
duty of driver with respect to trespassers on his automobile, 99 C 479
duty of employer who agrees to transport workmen from work, 99 C 573
right of travelers on highway each to assume that other will use due care, 99 C 633
automobile and trolley have equal rights in highway, 100 C 364
due care requires doing something more than estimating probabilities and then going ahead, 101 C 464
——driver should observe and conform his conduct to situation as it changes, 101 C 464
due care requires great caution in unusual situation, as where wrecking car is towing heavy truck at nighttime, 103 C 41
one who operates car while asleep is prima facie negligent, 103 C 583
driver turning up steep side street failed to shift gears and car rolled back across highway and over embankment; *held* her conduct was question of fact, 105 C 356
imminence of danger and fact that driver a woman have bearing upon standard of care, 105 C 356
meaning of finding that car was being driven "carefully," "with care and skill," 105 C 553
effect of warning signs placed by highway authorities at dangerous places in road, in determining whether driver exercised reasonable care, 105 C 553
automobile as dangerous instrumentality and reasonable care as requiring high degree of care, 105 C 693
right of plaintiff to assume that defendant will obey the law, 106 C 499
sudden and violent application of brakes on long hill causing car to overturn *held* negligence, 107 C 86
latent defect in automobile of standard make; duty and responsibility of owner, 107 C 201
right of traveler on highway to assume that others using it will obey rules of the road, 107 C 639
driver is not required "to use good judgment and make good use of his senses"; standard is that of ordinary prudent person, 107 C 670
ordinary care required in ordinary circumstances; great care only when danger is more than ordinary, 107 C 670
right of driver to proceed upon any portion of highway, 107 C 709
standard of care is fixed by law; measure of care, to be tested by that standard under all the circumstances, is question of fact, 108 C 180
motorcycle officer must exercise care of reasonably careful and prudent motorcycle officer under same circumstances, 108 C 180
exemption of police officers from duty to obey rules of road, 108 C 180
sudden emergency as excusing error in judgment, 108 C 505
collision at night between automobile, as it was turning into side street, and sled on which two boys were coasting, 108 C 505
duty of operator to use reasonable care to discover dangers or conditions of danger, 108 C 544
driver not bound to keep a perfect lookout; but only one which is reasonable under circumstances, 108 C 560
driver under no duty to watch parked car, 108 C 560
driver bound only to keep reasonable outlook, not to be looking ahead uninterruptedly, 108 C 560
rule adopted for determining "proximate cause," 110 C 184
negligence of driver in leaving car with motor running, unbraked, in street, proximate cause of its backing into store after small child had tampered with it, 111 C 58

driver put in perilous position *held* not guilty of contributory negligence for failure to use best judgment in attempting to avoid collision, 112 C 603
the legal standard of care of a reasonably prudent driver does not vary, but measure of care required is determined by circumstances, 112 C 605
defendant ran into plaintiff's parked car rendering brakes useless; negligence proximate cause of injuries to plaintiff from later losing control of car on steep grade, 114 C 599
failure of court to refer to fact that driver of car had arm about girl passenger, *held* not ground of reversal, 115 C 117
where mechanic was testing car to see if "shimmy" had been remedied but cause of wrecking car had nothing to do with shimmy, test of care to be applied would not be that of reasonably prudent man in performing such a test, 115 C 546
——nor would there be any question of contributory negligence on part of owner of car in riding with him when it was uncertain whether defect had been remedied, 115 C 546
driver of fire apparatus, proceeding to fire, is bound to exercise care and control of own safety and that of others which is reasonable under circumstances, 116 C 127
a signal to go given by officer authorizes driver to proceed but he must not be guilty of negligence or proceed at all if to do so would necessarily expose others to harm, 116 C 249
pedestrian crossing highway and injured by automobile or driver of one car injured by collision with another may be guilty of contributory negligence but he does not assume risk of negligence of party causing accident, 116 C 283
driver negligent prior to collision cannot nullify this primary negligence by any subsequent act, 116 C 576
duty owed by driver of automobile to one engaged in maintaining obstruction on highway in nature of common nuisance, 117 C 359
one unlawfully putting obstruction on highway in nature of nuisance deemed to have assumed risk incident to his conduct (dis.), 117 C 369
——driver on highway owes no duty to avoid injury to one responsible for obstruction until he becomes aware of it or knows its presence is reasonably to be expected (dis.), 117 C 369
if negligence of defendant created an emergency, legal responsibility to avoid accident not on plaintiff, 117 C 488
driver entitled to assume that other users of highway will obey law, including lawful traffic regulations, and observe reasonable care until he knows or should know assumption is unwarranted, 117 C 589
rule as to due care is more lenient and liberal when driver is confronted with sudden emergency, 117 C 589
——but rule not available to one who by his negligence has created emergency, 117 C 589
in operation of automobile, one is to be held responsible for what he does and not for some contemplated action which is never taken, 117 C 607
that by taking other precautions plaintiff might have avoided accident not conclusive that she was negligent, 118 C 124
——one put in position of peril by negligence of another not guilty of contributory negligence if he takes reasonably prudent steps, though he might have avoided injury by better judgment or taking another course, 118 C 127
plaintiff told defendant to put car in high gear while he pushed it out of garage; when gear caught car backed and pinned him to wall; verdict for plaintiff sustained, 118 C 701
gross negligence as involved in offense against criminal law, defined, 120 C 231
——whether conduct is of such a character depends upon particular circumstances of situation, 120 C 231
when emergency is created by defendant's own negligent conduct, that he subsequently did all that could be expected of him would not absolve him from liability, 121 C 432
traffic officer's signal does not authorize operator to proceed in negligent manner or at all if to do so exposes others to harm, 122 C 374
truck left on slope rolled backward and collided with front of plaintiff's store; defendant negligent in way in which he left truck, 122 C 662
defendant driver not absolved of liability by fact that negligence of another driver concurred with his own in producing collision, 123 C 142
in an emergency not due to his own negligence one not relieved of all obligation to exercise care but must exercise that of an ordinary prudent person in view of the emergency, 123 C 205
court will not apply as definite rule of law a standard of duty on part of driver that would require him to come to stop when unable to see way ahead of him, 123 C 214
fact that driver is confronted by sudden emergency not of his own creation, proper consideration in determining negligence, 123 C 590
driver entitled to assume that another will observe rules of road until he knows, or in the exercise of reasonable care, should

know, that assumption is unwarranted, 124 C 157

when vision momentarily impaired by lights of another vehicle, operator required to exercise care commensurate with danger, 125 C 354

——whether he should come to full stop depends on circumstances; question of fact for trier, 125 C 354

operation of car on highway illegally might constitute a nuisance in fact, 126 C 449

——and party loading it knowing it was to be so operated might be liable for resulting injury, 126 C 449

operator of vehicle upon highway entitled to assume that driver of another vehicle will use due care until he knows or should know to contrary, 129 C 554

§ 6. ——Statutory Provisions Generally; Miscellaneous Statutes and Regulations

whether violation of ordinance caused accident question of fact, 83 C 183

Legislature may vary standard of due care; operating automobile in violation of statute; distinguished from malicious injury, 83 C 503

to bar recovery, violation of law by plaintiff in traversing bridge must be proximate cause of injury, 89 C 325

whether bridge is part of highway, 89 C 325

violation of rule of road nil sig. unless entering into accident, 89 C 329, 697

that plaintiff was driving while intoxicated would not bar him from recovering damages for an injury caused by defendant's negligence; such intoxication must have been a proximate cause of the injury, 89 C 401

passing standing street car at more than three miles per hour immaterial if not proximate cause of injury, 90 C 701

breach of law does not prove negligence unless it was a breach of duty owed plaintiff directly contributing to accident, 96 C 663

——operation of motor vehicle by unlicensed driver, 96 C 663

——as to breach of statute forbidding reckless operation, 97 C 478

justification for turning into cross street in breach of statute by reason of traffic rules and customary course of conduct, 98 C 74

violation of rules of road established by statute as actionable negligence, 98 C 490, 99 C 633, 723, 100 C 551, 105 C 668, 689, 106 C 501, 107 C 633, 108 C 180, 109 C 77, 114 C 262, 387

relation of violation of statute as to recklessness in use of highway to issue of contributory negligence of pedestrian struck in street by automobile, 99 C 11

right to assume that others will obey rules of road and use due care, 99 C 637, 716

error to read to jury statute not applicable to evidence; but may be harmless, 105 C 689

trial court must refer specifically to statute, when applicable, unless it does not vary from common law, 106 C 383

statute as to automobile approaching a horse not applicable where horse is at large on highway, 106 C 383

clear and unmistakable legislative directions, though arbitrary, must be followed; reasonableness cannot be left to individual or to court or jury, 107 C 633

automobile may be driven on any portion of highway unless otherwise required by statute or due care, 107 C 709

exceptions to statute will not be implied where terms are clear, 107 C 709

power of Legislature to establish arbitrary standards as to operation, 108 C 209

——certainty requisite is met if law capable of practicable or sensible operation, 108 C 209

——as forbidding reckless operation, 108 C 209

meaning of "instruction" in statute concerning operation by unlicensed driver, 110 C 358

when violation of statutory rule of conduct constitutes actionable negligence, 114 C 262

——failure to register automobile does not in general constitute negligence where injury results from operation, 114 C 262

——but may if injury is due to lack of proper equipment, 114 C 262

——there is no causal connection between failure to register car and the accident, 114 C 262

there is no causal connection between lack of license and injury occurring from operation of car, 114 C 336

——nor is the age or experience of operator material upon issue of negligence, 114 C 342

what constitutes traveled portion of hard surfaced highway with dirt shoulders within meaning of rules of road; history of legislation, 114 C 336

dirt shoulder not a part of traveled portion of highway, 114 C 647

though compliance with statutory provisions is inconvenient, impracticable or unnecessary, failure to do so is not justified, 115 C 464

——one who violates provision does so at his own risk, 115 C 464

——as where bus was so long that it could not keep to right of intersection in turning from one street to another, 115 C 464

——but conditions may show that failure to obey statute is not proximate cause of collision, 115 C 468

where negligence alleged is the violation of statute, that negligence is matter of law; passing to left of street intersection as example, 116 C 78
signal to "go" given by officer authorizes driver to proceed, but not in negligent manner or in violation of a rule of the road, 116 C 249
when Legislature has enacted statute de operation of motor vehicles whicl is precise and clear, duty of court to apply it without limitation or exception, 116 C 576
statutory requirements not subject to exceptions based upon judgment of individual as to what is reasonable, 116 C 597
effect of statute that person killed by automobile is presumed to have been in the exercise of reasonable care, 116 C 717
where language of statute is clear, there is no choice but to apply it to effect expressed intent, 117 C 552
——but it must be assumed Legislature intended statute to be capable of sensible application, 117 C 552
violation constitutes negligence and if proximate cause of injury renders violator liable; otherwise in Massachusetts, 117 C 594
intention to violate statute not translated into action does not constitute such violation, 117 C 607
breach of statute proximately causing injury is basis to recover for negligence, 117 C 609
where charge stated that negligence through failure to comply with any standard of care imposed by statute must be shown as substantial factor, unnecessary to repeat this qualification as to each statute, 117 C 692
violation of statute causing injury establishes negligence as matter of law, 119 C 637
gross negligence in statute de misconduct of operator of motor vehicle resulting in death imports negligence of materially greater degree than mere want of ordinary care, 120 C 231
——inattention or carelessness of such character as to signify indifference to rights of others, 120 C 231
——court justified in concluding that conduct of driver who killed child in broad daylight while driving rapidly was grossly negligent in violation of statute, 120 C 231
when Legislature establishes rule of conduct by statute for protection of others from injury, violation of rule constitutes negligence, 120 C 415
three on front seat; contributory negligence question of fact, 121 C 89
failure of driver of automobile to obey statutory provisions constitutes negligence, 121 C 506
rule measuring conduct of children by what is to be expected of children of similar age, judgment and experience, not applicable to negligence arising from violation of statute, 122 C 447
——so plaintiff, a boy of ten, not entitled to this charge when he violated intersection statute, 122 C 447
duty of court to apply statute in accord with intent expressed in act without limitation, exception or extension, 122 C 449
legislative intent that rules of road shall not prevail over control by traffic officers, signal or sign, in those places where because of special hazard or other reason, such agencies are employed, 122 C 514
definite and certain rules of the road not subject to exceptions based on judgment of individual, 123 C 133
operator crowded by having too many persons on front seat; charge, 123 C 357
bus driver's alleged failure to stop and assist after colliding with automobile not actionable negligence; extent to which it could be considered, 123 C 605
that no person shall wilfully drive in such proximity to any other vehicle as to obstruct or impede traffic, not applicable where car out of control when it crossed center line of street without fault of driver, 124 C 223
while application of traffic regulations cannot be made subject of exceptions in particular situations, driver not guilty of negligence where violation occurs by reason of circumstances beyond his control and to which no wrongful act of his contributed, 126 C 700
what constitutes "traveled portion" of unsurfaced road in statute de parking, 127 C 340

§ 7. ——Speed and Control; Skidding

driving car in street at excessive rate is actionable negligence, 81 C 493, 83 C 174
effect of speed limit, 81 C 493
definition of "high rate of speed," 81 C 500
traveling in excess of speed limit is prima facie evidence of negligent and improper driving; but such speed not forbidden and driver not made insurer against all mishaps which may arise in the course of such operation, 90 C 701
to reduce speed and blow horn not required as matter of law, 93 C 99
whether driver has right to go at such speed that he cannot stop within distance at which he can easily see object ahead, 99 C 714
effect of provision making certain speed prima facie negligence, 98 C 490
driver on highway at night can assume road open for travel and in absence of warning that he can safely travel at reasonable speed, 100 C 117
——not negligence in law to go at speed such that he cannot stop within limits of his vision, 100 C 117
trial court's conclusion that skidding at bottom of steep hill was caused by icy road and

not driver's negligence, *held* reasonable, 105 C 553
liability where collision is result of skidding on icy pavement, 105 C 663
may be negligence to attempt to drive down steep, slippery hill under certain conditions, 105 C 663
skidding does not itself show negligence, 105 C 667
driver not bound to maintain speed which will enable timely stop or to have car under complete control, unless liability of collision is imminent, 105 C 689
increase of speed when being passed by another car may be negligence; verdict for defendant sustained where collision due to plaintiff's speeding up when former passed, 106 C 281
meaning of finding that defendant lost control of his car, 107 C 88
speed lower than that fixed by statute may, nevertheless, be unreasonable, 107 C 201
speed of safe operation depends upon traffic, weather and other conditions, 108 C 704
finding of negligence in driving at twenty miles when storm and freezing made drivnig dangerous, upheld, 108 C 704
——though no finding that chains or lower speed would have prevented accident; sufficient that negligence in these respects was found to have materially contributed to it, 108 C 706
no absolute duty to have car in such control that it may be stopped within limits of vision, 109 C 230
where collision due to negligence of defendant but substantial injury due to inability of plaintiff to control car thereafter because of high speed before accident, defendant *held* liable for whole injury, 110 C 184
charge *held* sufficient where claim of defendant was that his car got out of control by skidding on ice three hundred and fifty feet from accident and continued so until it happened, 111 C 41
trial court sustained in basing judgment upon negligence of defendant in causing truck to be overloaded, as substantial factor in bringing about its overturning, 115 C 117
——excessive speed would not as a matter of law constitute an intervening cause breaking the chain of causation, 115 C 117
skidding of automobile does not necessarily constitute negligence on part of driver; question of fact for trier, 115 C 490
allegations that defendant's failure to slow car upon seeing plaintiff in street and have it under proper control afford basis for verdict on ground of supervening negligence, 116 C 262
verdict against defendant C, who, driving at great speed, ran into car in which plaintiff was guest after it left driveway and was straightening out in highway, properly sustained, 117 C 124
skidding not in itself evidence of negligence, 117 C 345
——inquiry is, was driver guilty of negligence, causing car to skid, 117 C 345
where driver lost control of his car, negligence is not established though he might have avoided injury by use of better judgment and by taking another course than he did, 117 C 663
car in which plaintiff was riding skidded and collided with car of defendant A, in which A was proceeding on own proper side of road at thirty miles an hour; *held* verdict properly directed for A, 119 C 537
testimony of a witness as to distance and speed of car coming directly toward him at night, only headlights being visible, entitled to little weight, 119 C 651
tire mark of eighty feet and prolonged noise of brakes furnished basis for finding by jury that defendant was going at high rate of speed, 119 C 699
defendant drove down slippery incline at thirty-five miles an hour "free wheeling"; conclusion of negligence sustained, 120 C 1
conclusion that defendant, who rounded curve and then skidded on icy street in attempting to stop because of plaintiff's car in road, was not negligent, upheld, 120 C 685
plaintiff skidded off raised road, where he claimed there should have been fence; contributory negligence question of fact, 121 C 88
skidding not evidence of negligence, still less of reckless misconduct, 121 C 123
testimony that speed of car was "like lightning" entitled to but little weight as definite statement of speed of car, 121 C 699
speed at which plaintiff was proceeding across bridge (thirty miles) not so excessive as to constitute negligence as matter of law, 122 C 80
——nor would fact that car skidded on wet and slippery road necessarily show negligence, 122 C 80
skidding not negligence per se, but only when due to legal fault of driver, 125 C 72
——accident *held* due to unusual weather conditions and unavoidable, 125 C 72
defendant's negligence persisted up to time his truck came onto icy surface and was substantial factor in producing skid which caused collision and was proximate cause of damage, 125 C 609
skidding of car would only be basis for finding of negligence if due to some negligent conduct, 126 C 619
skidding on icy road is not in itself basis for conclusion of negligence, 126 C 700
where bus slipped around going up hill and backed to get on right side and was struck

by car which skidded coming down hill, whether either operator was negligent was question of fact, 127 C 725

skidding of car would only be basis of finding that driver negligent if it was due to some negligent conduct on his part, 127 C 725

meaning of finding that driver had his car under control, 129 C 60

truck went through fence on city street over bridge, after skidding on icy trolley rails; duty of city and railway company, 129 C 693

§ 8. ——Lights; Brakes; Equipment

driver cannot assume his horn or bell will be heard, 82 C 109

charge concerning use of chains, 83 C 174

exception in law requiring lights at night on vehicles, of those "designed for and engaged in the transportation of hay," etc., does not include vehicle in which is small amount of hay for feed of horses drawing it, 95 C 603

statutory requirement as to lights showing objects a certain distance ahead, 96 C 1

——effect as regards claim of contributory negligence where automobile collides with pile of mud and snow in street, 96 C 1

for jury to say whether headlights were proper and, if not, whether they were proximate cause of the accident, 96 C 1

use of phrase "visible" instead of "clearly visible" in charge with reference to exception in statute requiring red taillight, *held* harmless error, 97 C 149

conclusiveness of court's finding that collision due to defendant's negligence in failing to display red taillights, 98 C 372

driver of car has right to assume that others using highway will obey law as to lights upon rear of vehicle, 99 C 711

driving automobile during severe storm on slippery road; collision with standing truck without taillight, 99 C 714

whether driver negligent in driving into two trucks standing in road without lights is question for jury, 100 C 114

improper brakes; failure to advise jury of standard required by statute and potential effect of such deficiency if it materially contributed to cause collision, prejudicial, 106 C 385

duty when headlights do not disclose condition reasonably to be expected, 108 C 505

that dark object on road not visible two hundred feet away, does not necessarily prove violation of law as to lights, 109 C 206

to leave truck unlighted and unguarded at night, with end projecting into much traveled highway, *held* negligence, 109 C 500

statute de two systems of brakes on automobile does not make owner or operator insurer, 109 C 654

——liability only if defect was due to his negligence, 109 C 654

——intent to regulate vehicle, not conduct of driver, 109 C 654

——statute construed not to require driver at all times to have them in proper working order, 109 C 654

——similar rule as to rear lights, 109 C 659

presence of reflector on truck does not mean, as matter of law, that collision from rear was not caused by absence of taillight, 112 C 286

mechanical condition of car and defendant's knowledge of it may be material considerations, 114 C 668

concession by party that brakes were in poor condition and he did not apply them nil sig. where court finds that if in good condition and applied accident would not have been avoided, 115 C 201

liability of owner of car for injuries resulting from leaving it in parking station with brakes so defective that when it was being placed it ran onto sidewalk, injuring pedestrian, 115 C 472

conclusion of negligence on part of decedent justified where decedent had proper lights and was driving fast, 116 C 72

statute requiring lights which will show any person, vehicle or object upon roadway straight ahead for distance of two hundred feet, construed in light of common knowledge of varying degrees of visibility of objects, because of composition or coloring, 116 C 678

——no presumption of law that vehicle is equipped with lights complying with statute, 116 C 678

——condition of lights is fact to be proved by evidence, 116 C 678

one of defendant's trucks parked on plaintiff's side of highway without rear lights or reflector and other opposite it with bright headlights; conclusion that defendant was negligent and plaintiff who ran into rear of truck was not, sustained, 116 C 712

doctrine of injury without fault not applicable where injury due to defective operation by brakes where defendant knew of condition and continued to drive, 118 C 565

duty of driver to provide safe mechanism and remedy defective condition, 118 C 565

where accident would have happened even though brakes had not been defective, defect in them was not proximate cause of accident, 118 C 689

statute provides that operation knowingly with defective mechanism shall constitute violation of prohibition against reckless driving; so operator who is not owner may

be found negligent for driving with defective brakes, 119 C 310

court correct in submitting to jury question of whether defendant's truck was so constructed as to obscure view to rear and hence require equipment with mirror under terms of statute, 119 C 591

——also in submitting question of violation of this statute, which was directly in issue, 119 C 591

truck standing on highway at night without lights was in violation of statute though it did not appear how long it had been so standing, 119 C 637

violation of statute de lights on parked car as negligence, where decedent was changing tire after dark, 120 C 415

load of truck extended two feet beyond rear end of stationary floor on truck and was without red light in violation of statute, 120 C 596

parking of defendant's truck at night without red light in rear and so as to occupy two-thirds of lane was in violation of statute, 120 C 596

——no adequate basis for finding it could be seen two hundred feet and so within statutory exception, 120 C 596

court in error in submitting question of breach of statute de red light in rear when smoke or weather conditions render it impossible to see two hundred feet, since there was no evidence of such conditions, 121 C 432

statute requiring red light on rear at night imposes liability on operator for failure to have such light, regardless of whether or not such failure was due to his negligence, 122 C 208

statute requiring operator of commercial vehicle so constructed or loaded that he has no unobstructed view to rear to keep constant observation of approach of vehicles from rear by means of mirror; meaning of "constant," 122 C 208

plaintiff drove into rear of truck parked on highway at night without reflectors or red light; conduct of parties question of fact; plaintiff's right to assume that truck would provide safeguards required by law as bearing on due care, 123 C 402

violation of regulation of public utilities commission as to over-all width of bus by reason of projection of flexible fender was not actionable negligence, when no evidence that there was contact, 123 C 605

operation of automobile might constitute nuisance when even if properly operated it had tendency to collide with other vehicles or run against pedestrians, such as where braking system wholly ineffective, 125 C 362

——not so when due to some sudden or unexpected reason the brakes failed, 125 C 362

——to constitute nuisance in such case danger must be continuing one, 125 C 362

——so where car was old and accident due to imperfect operation of brakes when applied suddenly to prevent collision, no nuisance, 125 C 362

§ 9. ——Street Intersections

§ 9(1). In General; Definitions

driver should be "unusually careful" at street intersections; this means care commensurate with circumstances, 93 C 252

right of driver approaching intersection to assume other drivers will observe law, 95 C 266

definition of intersection; duties of drivers about to enter and while in it, 96 C 17

at street intersection automobile and trolley have equal rights to use of highway, 100 C 364

——and former has right to cross first if circumstances reasonably indicate that he can do so safely, 100 C 364

motorist and motorman must each exercise due care upon approaching each other at intersection, 100 C 364

——duty of motorman explained, 100 C 364

——motorist may assume motorman will use due care, 100 C 364

"intersecting highway" and "intersection" defined, 101 C 439

intersection defined as regards one street running into but not crossing another, 101 C 439

speed at intersection is not of itself conclusive proof of negligence, 109 C 33

violation of statutory rule at intersection not actionable unless proximate cause of injury, 109 C 77

where collision was at intersection no occasion to charge as to driver keeping to right side of road, 109 C 77

no peculiar sanctity attached to application of mathematical formula to determine space included within intersection, 122 C 202

——regard must be had to courses which traffic passing through it in various directions may normally be expected to take, 122 C 203

criterion for determining intersection where highways came together in shape of "Y" with all highway bounds curved, 122 C 203

general definitions of intersection, 122 C 205

what constitutes intersection where two highways, adjoining roadbed of railroad on opposite sides, are crossed by another highway through an underpass, quaere, 125 C 40

in determining space included within an intersection, regard must be had to course which traffic passing in various directions through it may normally be expected to take, 125 C 553

——intersection where triangle at junction created three separate highways, 125 C 553

§ 9(2). Turning; Keeping to Right

collision between bicyclist and motor truck; precise point of intersection *held* immaterial, 98 C 72

when driver justified in passing to left of street intersection, 98 C 72

signal of traffic officer as an excuse or justification; effect of traffic rules, 98 C 72

law applies to case where automobile had commenced to turn to left before reaching center of intersection, 102 C 567

duty to keep to right in turning to left at street intersection, 102 C 567

statutory rule de turning to left at intersection, *held* not applicable where collision occurred before plaintiff reached, and after defendant passed, the intersection, 105 C 410

collision where plaintiff turned first short distance to his right then sharply to his left to go in other direction, 106 C 264

if driver did not keep to right of center of intersection in turning to left into side street and this caused collision, he was liable, 108 C 180

jury could not reasonably have found that there was a failure to give signal of intention to turn to left, 108 C 180

defendant made left turn across path of children sliding down hill; verdict for plaintiff upheld, 108 C 505

defendant, making left turn after seeing no vehicle within three hundred and sixty feet, struck by car coming from her left; *held* her conduct presented question of fact, 108 C 544

statute becomes applicable where direction of car approaching on same street is so changed that situation is no longer one of merely meeting and passing, 109 C 484

——charge that it only becomes applicable when signal of intention to change direction is given, is erroneous because signal neither is exclusive means of bringing rule into operation nor does it necessarily make it applicable, 109 C 484

——duty of other driver arises when he perceives or should perceive intent to turn; this may be indicated by signal, change of direction or otherwise, 109 C 484

proximate cause where defendant started to turn to left of intersection, saw car coming and turned to right, just as other also turned to right to avoid collision, 110 C 271

defendant *held* liable for accident at intersection where he failed to give signal of turn, 111 C 729

driving of truck on left-hand side of street as it was about to turn into street intersecting on left was negligence, 113 C 522

because of size of bus it could not keep to right of center of intersection in turning; charge importing that substantial compliance with statute was sufficient *held* error, 115 C 464

if jury finds a driver has passed to left of intersection, his negligence is not for them to decide but is determined by law, 116 C 78

defendant turned left to go into intersecting street and collided with motorcycle of decedent coming out of underpass; verdict for plaintiff's decedent properly sustained, 117 C 484

——decedent had right of way and was entitled to assume no car would be turned into his path from his left without signal, 117 C 484

intention to violate statute not translated into action does not constitute such violation, 117 C 607

——as where appellant claimed plaintiff intended to violate statute by passing to left of highway while in intersection and that this intended transgression resulted in her injuries, 117 C 607

jury might reasonably have found that defendant in turning his car to left into intersecting street did not yield right of way to plaintiff and did not pass to right of intersection, 117 C 669

——whether driver of plaintiff's car was required to slow car or take other precautions was question of fact for jury, 117 C 669

conclusion of negligence follows finding that defendant was to left of center line when collision occurred in intersection, 118 C 124

violation of statute de passing to right of intersection not negligence per se in Massachusetts as it is here, 118 C 154

——charge of court that plaintiff driver by violating statute was negligent erroneous, 118 C 154

——but as verdict in companion case of infant passenger was also for defendant, this error not harmful, as verdict imputed that defendant was not negligent, 118 C 154

——so also as to charge de location of intersection, 118 C 154

H gave no signal of intention of turning into intersection and though warned by guest of approach of another car went forward with intention of making other car stop; question of heedless disregard one of fact for jury, 118 C 632

plaintiff's car turning left at intersection, struck by defendant's truck approaching from opposite direction, driver of former thinking latter was some distance away; verdict sustained on conflicting testimony, 119 C 651

duty to give signal of intention to turn, 121 C 506

plaintiff guilty of contributory negligence in driving through intersection to left of center line in violation of statute, which continued down to moment of collision with truck and was substantial factor, 122 C 1

——defendant's truck driver violated statute in turning into intersection without signal, 122 C 1

plaintiff, boy of ten, not entitled to charge de allowance for immaturity in measuring his conduct, when his negligence consisted of breach of intersection statute, 122 C 447

failure to keep to right of intersection is negligence, 122 C 614

——and where plaintiff's negligence in riding bicycle to left of center of intersection and turning into street on left continued down to moment of impact with defendant's car, it was substantial factor in producing his injuries, 122 C 611

pedestrian entitled to assume that car will obey rules of road and pass to right of center of intersection, 124 C 692

charge that if there was place in intersection which distinctly divided it so that it was not practicable to keep to right of center, driver would be entitled to abide by that situation as he found it, erroneous, 125 C 151

passing to left of intersection is violation of statutory rule and constitutes negligence in and of itself, 125 C 151

belief of operator as to risk of collision not the test of negligence in turning in front of another car into intersecting street; correct rule stated, 126 C 12

where sides of road flare out before meeting intersecting highway center line is line equidistant from edges at all points and from projection of edges into other road, 126 C 478

if plaintiff cuts corner at intersection he is negligent and if he continues keeping car to left at all times until collision this negligence is substantial factor barring recovery, 126 C 480

statement of rule for determining center line of highway having parallel sides in case of dirt road and hard-surfaced road, 126 C 481

failure of truck driver to signal intention to make turn at intersection was substantial factor in causing injury to persons on sidewalk thirty feet away who were struck by another car deflected from its course, 128 C 437

——persons on sidewalk are too liable to suffer injury from negligence of drivers not to be within class of those entitled to protection from negligence, 128 C 437

§ 9(3). Right of Way

test for giving right of way; "arriving at such intersection at approximately the same instant," 95 C 695

vehicles *held* to be arriving at intersection at approximately same time and statute applicable, 96 C 17, 505

no right of way involved unless vehicles arrive at intersection at approximately same time, 101 C 439

if one car is in intersection when other is one hundred feet away, latter does not have right of way, though on right, 101 C 439

charge as to right of way in case of accident at street intersection, 101 C 444

right of way at street intersection; failure to yield *held* contributory negligence, 104 C 737

right of way at street intersection; when driver on left has right; rights and duties of of both drivers, 106 C 143

one having right of way may assume that other will grant it, 106 C 143, 107 C 160, 108 C 602, 109 C 33

right of way must be exercised with reasonable care, 106 C 143

right of way at intersection; one approaching on left may have it if he has no reason to fear risk of collision, 107 C 160

where jury might have found that driver could reasonably expect to cross in safety in front of trolley, nonsuit not proper, 107 C 160

——driver on right of trolley had right of way, 107 C 160

——right and duty of driver and motorman in such a situation, 107 C 163

——contributory negligence of driver and negligence of motorman question of fact; inferences might be drawn that motorman gave no signal and was driving too fast without proper lookout, 107 C 160

where no claim is made that cars did not arrive at intersection at approximately the same time, no need to charge jury as to meaning of this provision, 107 C 709

car on right has right of way though it has turned to left half of road to pass another going in same direction, 107 C 709

driver having right of way may assume that other would grant it, and control car accordingly, 108 C 9

——but must himself operate his car as would one having such right of way, 108 C 9

effect of driver stopping before entering intersection as regards right of other driver to assume right of way had been yielded, 108 C 9

where driver had passed nearly through intersection when struck by defendant's car coming from right, statute as to right of way not applicable, 108 C 602

car on left which had entered intersection and passed nearly through when struck, *held* to have had right of way, 108 C 602

inability of car having right of way to avoid striking other when it enters his path, is not conclusive of former's negligence, 109 C 33

test of "arriving at approximately same time" defined; must be adequately explained to the jury, 109 C 33

——charge that fails to properly give it but states that if driver on left entered intersection when other was some considerable distance away former had it, without attaching qualifications as to speed, etc., erroneous, 109 C 33

——driver having right of way may assume other will grant it and have car under control so that former acting with due care may proceed, 109 C 33

that car is reasonable distance away from intersection is not test as to approaching it at approximately the same time, 109 C 489

statute *held* not applicable where car on left had entered intersection before other reached it, 110 C 276

duty of both parties at intersections to use proper care, 110 C 358

——driver having right of way should not insist if there is danger of collision, 110 C 363

driver having right of way may assume he will be given precedence; but cannot disregard other approaching vehicles, 112 C 402

——and may be guilty of negligence where he did not look for one entering intersection on left, 112 C 402

statute as to right of way not applicable unless cars approaching at approximately the same time, 112 C 689

——if they are not, car first entering intersection has right of way, 112 C 689

plaintiff entering intersection before defendant approaching from the right; former not guilty of negligence as matter of law; law of Texas the same, 113 C 302

one who has right of way must nevertheless exercise proper care, 113 C 757

right of person having right of way to assume that other car would give it to him, 113 C 784

——and that driver would regard situation of danger due to fog, 113 C 784

statute giving ambulance right of way *held* not repealed by later statute de traffic lights and signals, 114 C 400

——and driver not negligent in traversing intersection when traffic light was against him, 114 C 400

driver of ambulance might be negligent in entering intersection at reckless speed without looking to right, 114 C 400

——and truck driver might be negligent in not hearing siren or looking to left, 114 C 400

one having right of way should operate car as reasonably prudent person would do under like circumstances, 114 C 637

plaintiff thrown out of defendant's car by collision after "U" turn; charge to jury, 115 C 508

driver having right of way bound to use care proportionate to situation, 115 C 712

driver of car having right of way at intersection must operate car as would reasonably prudent person who knows he has right of way, 116 C 675

——not absolved from duty to guard against danger from traffic approaching on left, 116 C 675

one has right of way where he arrives at intersection so long in advance of the other that man of ordinary prudence would not believe that if both continued there would be accident, 116 C 675

where driver's vision is obscured by hedge at intersection he is obligated to use greater care than he otherwise would, 116 C 675

conclusion that negligence of driver of taxi in which plaintiff was riding and driver of car which collided with it at intersection were both substantial factors in producing accident, upheld, 116 C 675

defendant had right of way at intersection, slowed down and seeing plaintiff's car slow down speeded up simultaneously with plaintiff to cross intersection; conclusion that defendant not negligent justified, 117 C 170

use of phrase "risk of collision" to explain statute de intersections *held* correct, 117 C 522

jury might reasonably have found that defendant in turning his car to left into intersecting street did not yield right of way to plaintiff and did not pass to right of intersection, 117 C 669

——whether driver of plaintiff's car was required to slow car or take other precautions was question of fact for jury, 117 C 669

plaintiff had entered intersection and proceeded some distance before defendant entered it and jury could have found that he had done so in exercise of reasonable care and therefore had right of way; *held* whether plaintiff was thereafter in exercise of reasonable care in proceeding through intersection, question for jury, 117 C 676

one having right of way entitled to assume that other party will grant it to him so that he may proceed through intersection, 117 C 676

W already passing through long intersection had right to assume that any driver coming into it would exercise reasonable care to avoid collision, 118 C 677

——and B driving in front of W without stopping or giving signal was negligent, though he was on right of W, 118 C 677

plaintiff's driver approaching intersection having right of way with open field in direction defendant was approaching and dangerous condition on other side might to unusual extent rely on right of way; not guilty of contributory negligence, 118 C 692

where driver on left of another at intersection has passed more than half way through when other enters it, first has right of way, 122 C 204

underlying purpose of statutes concerning right of way at intersections is to prevent collisions; they are essentially traffic regulations, 122 C 202

——and to be so interpreted if their meaning is not definitely settled by language used, 122 C 202

jury sustained in concluding that defendant's negligence was substantial factor in collision at intersection, 122 C 542

——even if defendant had right of way jury could have concluded that in failing to use due care in exercise thereof she was negligent, 122 C 545

one having right of way has precedence in passing through and the right is not to be hindered, obstructed or delayed by any person who could reasonably avoid doing so, 123 C 296

driver entering intersection well before truck coming in opposite direction reached it had right, using due care, to turn left proceeding in front of truck, 124 C 90

if collision due to failure to observe right of way, that cars came together outside bounds of intersection, nil sig., 124 C 259

where driver turns to left at intersection to proceed into intersecting street, driver approaching from opposite direction, being on former's right, has right of way, 124 C 259

——that car making turn actually enters intersection does not necessarily give it right of way, 124 C 260

——but one having right of way must exercise it as would reasonably prudent person and court might reasonably have concluded that defendant did not do so, 124 C 260

——plaintiff was guilty of negligence as matter of law in turning left into intersection without seeing defendant's approaching car when visibility was good, there was no traffic, etc., 124 C 260

when duty to give right of way at intersection exists, 124 C 263

plaintiff having right of way at intersection entitled to recover for collision within it with defendant's car, 125 C 386

——entitled to assume that defendant would yield right of way, so not negligence as matter of law to continue without reducing speed after seeing defendant approach intersection, 125 C 388

car which has entered intersection has right of way over another on the right which has not entered it, 125 C 734

plaintiff turned left to drive down intersecting street; in driving across in front of defendant in violation of right of way plaintiff was negligent, 126 C 9

——and in failing to stop though in second gear and going ten miles an hour, but continuing until impact, her negligence was active cause and as matter of law barred recovery, 126 C 9

——but defendant also negligent though he had right of way, and could not recover on counterclaim, 126 C 9

test for determining whether two automobiles are arriving at intersection at "approximately the same time," 127 C 450

——when they are so arriving, person on right entitled to assume that other car will yield right of way, 127 C 450

question of fact, not law, as to which automobile had right of way at intersection, 127 C 648

——one whom jury found had right of way, entitled to assume car on left would yield it, until as reasonable man he was charged with knowledge to contrary, 127 C 651

——question of fact whether he should have seen other car coming out of dark street without headlights, 127 C 651

§ 9(4). Approaching and Entering; Traffic Signals

driver of vehicle may assume that another approaching intersection will not increase speed, 95 C 696

duty of a driver under statute approaching intersection where there are traffic lights, 114 C 637

——if yellow light shows when he is too close to intersection to stop before entering it, he has right to proceed through, 114 C 637

statute de slowing down and giving signal on approaching intersection, 116 C 576

——where reasonable care required that driver do both and he failed to do so he violates statute, 116 C 576

——but if reasonable care required he do one and not other, his failure to do other not violation, 116 C 576

bringing car to full stop at property line of "through" street where there is intersecting street with "stop" sign, 116 C 597

——if sign is few feet from property line, stop at sign is sufficient compliance with spirit, 116 C 597

——reliance upon location of sign is compliance with statute except in exceptional case where sign is not at or near property line, 116 C 597

——charge that plaintiff's duty was to stop at sign correct though sign was twelve feet from property line, 116 C 597

statute requiring vehicle approaching intersection of "through" street to be brought to full stop at prolongation of its nearest property line, 117 C 548

——purpose is that vehicle be brought to full stop before proceeding into intersection, 117 C 548

——result accomplished by stop at "stop" sign though that is not located at property line, 117 C 548

——except in exceptional case where sign is obviously not at or near property line, 117 C 551

where defendant claimed that before he reached street intersection traffic light showed green and so continued until he entered it, no occasion to charge as to portion of law dealing with yellow light in such signal, 119 C 262

plaintiffs crossing at street intersection struck by defendant's truck which did not slacken speed or sound horn; verdict for plaintiffs sustained, 120 C 445

driver of bus warranted in obeying green arrow, passing to right of plaintiff's car and proceeding in westerly of two traffic lanes, 122 C 514

——and plaintiff negligent in pulling to right at acute angle in front of bus from east lane, 122 C 514

evidence ample to warrant finding that plaintiff negligently entered intersection at excessive speed in violation of signal and that this was proximate cause of accident, 125 C 37

where arrangement of light signals at intersection was departure from usual practice contemplated by Legislature, since it fell within statute's broad provisions, court had no choice but to charge upon statute, 125 C 43

action of driver in releasing brakes in effort to turn into through route while skidding and to avoid collision, was conduct in face of emergency and not negligence, 126 C 700

——that she skidded by stop sign through circumstances beyond her control did not render her negligent, 126 C 700

statute prescribing duties of driver approaching intersecting highway, provided signs legible for one hundred feet indicate such intersection, places no duty on traffic authorities to erect sign of any particular type or legibility, 127 C 228

——plaintiff had burden of proving that signs were legible for one hundred feet in order to charge driver approaching intersection, 127 C 229

driver stopped at stop sign which was obviously not at or near property line and where he did not get good view of intersecting through way and then proceeded into through way; *held* no compliance with statute providing that he stop at prolongation of nearest property line of through way, 127 C 229

——if location of property line not within reasonable observation of driver, statute would set up impossible standard and would be inoperative; in this case usual standards of reasonable care would control, 127 C 229

driver of plaintiff's car guilty of contributory negligence in approaching intersection at unreasonable speed and failing to keep proper lookout, 129 C 76

§ 9(5). Miscellaneous Cases

doctrine of supervening negligence not involved where automobile and motorcycle collide at street corner which they approach at right angles and each claims other drove at excessive speed, 95 C 466

defendant's driving at street intersection *held* not negligent, 103 C 29

evidence *held* to support conclusion that operator might reasonably believe he could cross intersection without risk of collision with jitney bus approaching on his right and apparently stopping to discharge passenger, 103 C 667

whether operator negligent in not looking to left at intersection, *held* a question of fact, 105 C 247

where plaintiff's car was run into when almost out of intersection defendant's liability established, 111 C 722

where automobiles both continued in motion till collision at street intersection, doctrine of last clear chance *held* not to apply, 115 C 295, 464

cars of two defendants collided at street intersection and one of them was driven on sidewalk and killed plaintiff's decedent; verdict against both defendants properly sustained, 115 C 711

whether plaintiff or defendant were negligent in manner in which they drove through intersection were questions of fact and motion to set aside verdict properly denied, 117 C 548

plaintiff's car turned left into intersecting street on four ply road seeing nothing approaching up to brow of hill four hundred feet away and was run into by defendant coming over hill fifty miles an hour; judgment for plaintiff sustained, 117 C 671

——whether defendant was negligent in not having car under control or in not passing to left of plaintiff questions of fact, 117 C 671

jury justified in accepting plaintiff's version and rejecting defendant's claim that physical

facts disclosed contributory negligence of former in that she should have seen latter's car approaching before she entered intersection, 117 C 692

duty of truck driver rounding busy corner to have truck under control and keep proper lookout for pedestrians, 118 C 707

——and pedestrian who looked before stepping off curb and then did not look again while he was taking few steps not negligent as matter of law, 118 C 707

driver entering intersection swung left and onto sidewalk on opposite side injuring pedestrian, claiming sudden emergency caused by another car and trolley; verdict for plaintiff properly sustained, 119 C 63

conclusion that R's failure to keep lookout and that his driving truck into intersection at speed he did constituted negligence causing accident, sustained, 123 C 227

collision at intersection; *held* no basis in evidence for finding by jury of wanton misconduct, 125 C 151

§ 10. ——Meeting Vehicles and Persons Coming from Different Direction

proximate cause where automobile runs into pole in effort to avoid street car being negligently operated, 79 C 461

bicyclist injured by automobile; high speed and failure to turn to the right; speed of automobile in street, 81 C 492, 500

——statute does not prohibit using left side of road, 81 C 492

duty to drive on the right side of the road only when a person or vehicle approaches, 81 C 493

failure to look for approaching car is not always decisive of question of due care, 82 C 170

proximate cause when driver too near trolley and steering gear broke, 88 C 498

proximate cause where street car runs into a truck, 90 C 21

duty to observe flagman at railroad crossing, 90 C 52

how far automobile must turn out, question of fact, 92 C 336

contributory negligence of one following behind a truck that collides with a trolley, 92 C 594

suddenly turning from right to left to avoid collision not necessarily negligence, 94 C 127

negligence in driving truck over private railroad crossing, 95 C 479

liability of two defendants driving cars which collide whereby one was thrown against plaintiff's car, 95 C 732

glare of approaching headlights a circumstance to be considered, 99 C 482

where plaintiff is compelled to drive near trolley track so that he was struck by car by reason of way approaching truck was being driven, effect of concurring negligence, 100 C 486

motorman *held* negligent where with an abundant opportunity to make a condition of safety sure he went ahead on a close calculation of probabilities, 101 C 463

——thinking that automobile was going to pass in rear of car he speeded up and too late found it was trying to pass in front, 101 C 463

——so of automobile driver, due care required that he do something more than make an estimate of probabilities and then go ahead, 101 C 464

——he was bound to observe and conform to situation as it changed from moment to moment, 101 C 464

collision between defendant and third party followed by collision with plaintiff; *held* no concurrent negligence involved, 101 C 490

duty of driver to yield half the road applied to wrecking car towing truck, 103 C 47

duty of operator upon approaching horse or draft animal, 106 C 383

violation of statutory rule de keeping to right of highway not actionable unless proximate cause of injury, 109 C 77

it is contributory negligence to drive onto railroad crossing without looking to see if train is coming, 110 C 145, 112 C 279

duty of driver crossing road from his left to his right-hand side, 110 C 230

equal duty rests upon each driver as they approach, 111 C 44

charge as to statutory duty to allow approaching vehicle room to pass, upheld, 111 C 100

where projecting rail of trolley prevented automobile getting off track, negligence of motorman and contributory negligence of driver *held* questions of fact, 111 C 525

right of motorman to assume that other users of the highway will use reasonable care, 112 C 476

right to drive on left side of road conditioned upon noninterference with approaching vehicles and reasonable care, 112 C 603

——such care not found where but thirty feet of visibility and driver on left proceeded without warning, 112 C 603

requirement that driver shall give half of traveled way to approaching car is conditioned upon practicability of that course, 112 C 603

in case of improved highway, hardened surface is portion intended for travel within rules of road as to vehicles passing, 114 C 336

——shoulder is not part of road proper, but intended for emergency use only, 114 C 336

verdict upheld where evidence was conflicting as to whether defendant was on left or right of center of road, 114 C 370

plaintiff's car collided with one going in opposite direction; physical facts; verdict for plaintiff sustained, 114 C 715

where negligence of one driver caused plaintiff to turn course of his car and so collide with another, negligence *held* proximate cause of injuries, 114 C 735

verdict in favor of guest and against driver in suit by them against driver of another car upheld, 115 C 112

omission, in explaining statute, of words "if practicable," *held* immaterial, 115 C 116

decedent's automobile struck first on side by that of defendant C and then by that of defendant R from rear; verdict against both defendants justified, 115 C 352

plaintiff was guest in defendant C's car which collided with wrecker of defendant A; nonsuit as to C *held* proper but that as to A error, 116 C 67

one approaching railroad crossing not relieved from exercising senses and avoiding collision with train because of ignorance of crossing if presence of railroad is obvious to one using ordinary powers of observation, 116 C 638

——nor by fact that attention was occupied in guiding automobile on highway, 116 C 638

plaintiff driving slightly to left of white line but to right of center of highway, line not being in exact center; defendant driving considerably to left of center; *held*

——accident would have occurred even if plaintiff had been to right of white line; her conduct not a proximate cause of collision, 116 C 661

defendant's car passed truck on four panelled road and plaintiff's intestate, going in opposite direction, turned to left to avoid it and collided with truck; verdict for plaintiff properly sustained, 117 C 478

defendant failed in attempt to park car at curb between two others, drove out in street again, was struck by trolley resulting in injury to passenger in latter, both motorman and defendant thinking there was room for trolley to pass; verdict for defendant properly sustained, 117 C 665

——and in view of testimony of motorman that he saw automobile when it was some distance away standing in street, jury might find that failure of defendant to signal was not proximate cause, 117 C 665

tire marks and fact that body had to be raised by crowbars not conclusive that defendants' truck was not on left of road at time of collision, as against court's finding, 118 C 124

collision between two cars going in opposite direction; *held* jury justified in accepting plaintiff's version and physical facts not such as to require verdict be set aside, 118 C 385

conclusion that plaintiff's car was partly on left of center of highway, drawn from positions of cars after accident and from glass mostly on left side, *held* unwarranted, 118 C 468

defendant's brake "grabbed" causing car to swerve to left side; jury might reasonably conclude he was negligent, 118 C 565

defendant negligent in passing car which turned onto shoulder, in not keeping eyes on road and getting over on plaintiff's side, 118 C 703

where plaintiff saw car parked at side of highway, it was not his duty to keep his eyes fixed upon it without interruption, 118 C 706

mere fact that defendant operated car to left of center of street does not necessarily establish negligence, 119 C 178

——evidence would have to show, in addition to operation to left of center, that defendant was negligent, 119 C 178

——no rule of law requires operation to right except at street intersection or in passing, 119 C 178

mere fact (brought out by interrogatories) that man was on railroad crossing swinging white lantern would not make operator of automobile struck by train guilty of contributory negligence as matter of law, 119 C 630

——but where evidence showed he saw no light and heard no signal of approach of train, though employee was swinging lighted lantern across line of street, he was negligent in law, 119 C 630

——doctrine of supervening negligence not applicable as decedent's negligence continued as active force down to moment of collision, 119 C 630

real cause of collision was negligence of driver of bus in failing to reduce speed and turn to right to give automobile half of road in which to pass, 120 C 367

plaintiff's car struck by truck and swerved across highway coming into collision with defendant's trailer truck, which was following first truck; jury could not reasonably have found defendant negligent and directed verdict sustained, 120 C 482

no rule of law requires driver before crossing trolley tracks to be constantly on lookout for approaching trolley, 120 C 560

——required to make reasonable use of senses not utmost practicable use, 120 C 561

——and question whether he did is one of fact for jury, 120 C 561

conclusion of jury that plaintiff was not negligent in failing to see defendant's truck sooner than he did and more quickly turning his car to avoid it, sustained, 120 C 680

jury could reasonably find that defendant driver did all he could to stop car before

it was struck by skidding car in which plaintiff was riding, 121 C 123

for jury to determine which version of accident was true when each party claimed other turned onto wrong side of road, 121 C 480

finding that driver of defendant's car pulled not more than one foot to his left of center in passing another car construed to mean not that entire car was to left of center but that left side of it was slightly to left of center, 122 C 259

——conclusion that driver of car in which plaintiff was riding which was approaching in opposite direction had sufficient room to pass, sustained, 122 C 259

——as well as further conclusion that he was negligent in not utilizing it instead of turning to left as he did, 122 C 259

giving half the highway to person met so that he may pass, "if practicable"; latter phrase construed to embrace situation where person met is on operator's side of road and adjacent bank renders compliance with rule impracticable, 123 C 127

no liability unless jury first found that there was collision which caused plaintiff's car to go off road, 123 C 605

where jury resolved fundamental issue as to whether there was contact between bus and car which caused accident, in favor of plaintiff, court properly denied motion to set aside verdict, 123 C 606

duty of driver overtaking and passing parked car to do so subject to right of way of vehicle passing in opposite direction, 124 C 157

——driver of other car entitled to assume that this duty will be observed until he knows or should know that assumption has become unwarranted, 124 C 157

it could not be held as matter of law that truck driver, being confronted with emergency created by sedan approaching from opposite direction turning out to pass parked car so that there was no room for truck to pass between sedan and trolley, failed to use due care, 124 C 157

statute that where two vehicles meet, driver of each shall seasonably turn to right and give half of traveled portion of highway if practicable and opportunity to other driver to pass, not applicable where car out of control and crossed center line of street without fault of driver, 124 C 223

collision between trolley and automobile which could not get off tracks; question for jury whether motorman should have become aware that driver could not escape peril and whether subsequently former could have avoided accident; charge de last clear chance should have been given, 126 C 124

collision on curve; indisputable facts not such as to permit setting aside verdict on the conflicting evidence, 126 C 150

plaintiff's bumper engaged by that of defendant as latter attempted to pass and former's car then struck by other defendant coming from opposite direction; last clear chance not applicable, 126 C 246

——question of intervening force and superseding cause squarely presented, 126 C 247

plaintiffs' car struck by car of one of defendants then by truck of other; jury could reasonably have found both defendants negligent on conflicting testimony; second collision substantial factor causing injuries, 126 C 462

where, upon evidence, jury could not reasonably accept testimony of plaintiff that third car was involved, verdict against driver of car which collided with one in which plaintiff was riding could not stand, 126 C 614

——and with this vital element lacking verdict against driver of plaintiff's car could not stand, 126 C 614

driver of coupe did not exercise reasonable care by looking or listening for approaching traffic before opening door, 129 C 31

where defendant's car coming in opposite direction crashed into plaintiff's car, which had attempted to pass another car and, not having time, had turned sharply to left, crossed road and come to stop, jury could have found that plaintiff was in zone of danger, 129 C 333

——court should have charged on doctrine of last clear chance and left jury to decide whether defendant had opportunity to avoid collision after he saw plaintiff in position of peril, 129 C 334

where both parties proceed in their course to moment of collision and plaintiff does not come into position of peril until instant he is hit, doctrine has no place in case, 129 C 336

§ 11. ——Passing and Overtaking

violation of rule of the road in turning to the left instead of to right to avoid automobile approaching from rear does not preclude recovery unless it is proximate cause of the injury, 89 C 697

that automobile ran by street car, of no significance unless that is proximate cause of accident, 90 C 701

turning off paved street to pass trolley not necessarily negligence, 94 C 533

where rule as to passing of vehicles was not basis of action, still it was so much a part of the circumstances that court properly called it to attention of jury, 96 C 505

collision between touring car and truck after former had passed latter; directed verdict for defendant *held* erroneous, 103 C 675

plaintiff driver not necessarily negligent though he did not see truck which collided with his car, 105 C 663

——though truck skidded into plaintiff's car driver might be guilty of breach of statute against reckless driving or driving at unreasonable speed, 105 C 663

——so of statute requiring him to reduce speed and keep to right in passing, 105 C 663

——allegation of illegal operation on left side of road permits proof of failure to obey rule as to passing, 105 C 668

——failure to keep to right through no fault of driver not negligence, 105 C 668

duty of operator who is being passed by another car, 106 C 281

verdict for defendant upheld where jury might find that collision due to plaintiff's speeding up when defendant tried to pass, 106 C 281

duty of driver on overtaking standing trolley; when passage at distance of ten feet or more is possible, 106 C 499

wilful or wanton misconduct as regards automobile passing standing trolley, 107 C 197

statute de passing on left must be strictly followed, even where there are multiple lines of traffic moving in same direction, 107 C 633

great care not test where automobile passes another going in same direction, unless situation is one of unusual danger; this is question for jury, 107 C 670

——driver not required "to use good judgment and make good use of his senses"; standard is that of ordinarily prudent person, 107 C 670

policeman patrolling highway and passing to left of trolley going in same direction struck by car also going in same direction when he returned to center of highway, 108 C 180

——statement of policeman that he gave signal not overcome by testimony of driver that he saw none, 108 C 180

——passing to left of trolley by policeman is negligence, 108 C 180

operator crashed into rear of one truck while another truck was parked on opposite side of highway, 108 C 191

conduct of operator in momentarily turning his head and thus colliding with car in front, considered, 108 C 371

where car at night ran into rear of trolley because driver looked at lights of approaching car though not blinded by them, he could not be held free of contributory negligence, 109 C 481

where car ran into horse being led on highway at night, doctrine of last clear chance applied, 114 C 383

——effect of intoxication of man leading horse, 114 C 383

defendant's car made abrupt stop in line of traffic and plaintiff's car ran into it from rear; verdict for defendant upheld, 114 C 415

decedent's automobile struck first on side by that of defendant C and then by that of defendant R from rear; verdict against both defendants justified, 115 C 352

defendant, under instruction, collided with plaintiff's car in passing it; conclusion that former was negligent, or if incompetent that this was cause of accident, could not be reached, 116 C 515

where driver, in attempting to pass truck going in same direction at night, misjudged its width, question of negligence for jury, 117 C 274

plaintiff drawing up on right of defendant as they approached intersection where stoplight showed red did not have right of way under statute stating that cars "overtaking" others shall pass on left, though street was broad and plaintiff did not intend to pass defendant, 117 C 619

——statute imperative and applies to all vehicles overtaking others, 117 C 619

——is designed to obviate danger of collision while car passes alongside another, 117 C 619

plaintiff not guilty of contributory negligence in colliding with rear of defendant's car when faced with sudden emergency, 117 C 691

plaintiff collided with truck after latter backed out of parking space onto road; former not guilty of contributory negligence, 118 C 704

——rule of passing to left of overtaken vehicle not applicable, 118 C 704

jury might have found that defendant turned sharply to left as plaintiff tried to pass him, after sounding horn, and plaintiff then applied brakes and skidded; negligence and contributory negligence question of fact for jury, 119 C 591

though defendant's failure to give signal that he was turning out to pass another car violated his statutory duty and constituted negligence per se, such negligence would be basis of recovery only if proximate cause of damage, 122 C 259

——conclusion of court that negligence of plaintiff's driver was the proximate cause of injury excluded this essential element, 122 C 259

truck ran into rear of automobile when latter stopped for traffic light; turning of latter into path of truck created emergency which jury could consider; verdict for defendant sustained, 122 C 667

driver of automobile held liable for failure to give warning of his intent to pass bicycle on the seat of which plaintiff was riding with boy pedaling, even though boy failed to give warning of intent to turn bicycle as required by statute, 125 C 60

duty resting on driver of vehicle following another vehicle is that of using reasonable care under circumstances; question one of fact not of law, 125 C 472

——question of contributory negligence of driver of truck who kept it only twelve feet behind car of defendant in line of traffic, at speed of fifteen to twenty miles an hour, properly submitted to jury, 125 C 472

where plaintiff's truck ran into rear of defendant's truck, which had passed and without warning cut in front and stopped for traffic signal, conclusion that plaintiff free from negligence which was substantial factor sustained, 129 C 11

to words of statute that person driving car overtaking another should pass on his left and other car should turn to right should be added by implication "while traveling in the same direction," 129 C 455

——slight variation in direction would not affect operation of statute as matter of law; great variation might take case out of statute as matter of law, 129 C 456

——between the two there is debatable ground where it is question of fact for trier whether cars were traveling in same direction, 129 C 456

——so where truck turned gradually to left as it neared intersection then turned suddenly to right to go into it and car following collided with truck, question of fact whether there was change of course which made statute inapplicable, 129 C 456

conclusion that defendant was not negligent when car struck boy's bicycle in passing as latter turned sharply to left, sustained, 129 C 492

§ 12. ——Collisions with Stationary Vehicles

approach of automobile to horse-drawn vehicle, 77 C 338

one stopping on the left-hand side of the street for a lawful purpose is under no legal duty to notify vehicles approaching from the opposite direction of his presence there, 90 C 502

driving automobile during severe storm on slippery road; collision with standing truck without tail-light, 99 C 714

whether driver negligent in driving into two trucks standing in road without lights, is question for jury, 100 C 114

defendant with vision of eight hundred feet, drove truck at night into rear of another truck standing at side of road; *held* verdict for plaintiff reasonable, 105 C 689

shoulders of road as not part of traveled portion in statute forbidding parking of cars on highway under certain circumstances, 108 C 191

verdict for plaintiff improperly set aside where defendant left truck unlighted and unguarded projecting into road on dark night, 109 C 500

driver of car *held* guilty of contributory negligence in not seeing red disk on rear of truck stopped on road at night in light of his own car, 112 C 286

presence of reflector on truck does not mean, as matter of law, that collision from rear was not caused by absence of tail-light, 112 C 286

dirt shoulder not part of traveled portion of hard surfaced highway; defendant parked thereon not obstructing highway, 114 C 647

while parking in violation of the statute would constitute negligence, it does not follow that statute authorizes parking without other precautions than those expressly required, 116 C 569

one of defendant's trucks parked on plaintiff's side of highway without rear lights or reflector and other opposite it with bright headlights; conclusion that defendant was negligent and plaintiff who ran into rear of truck was not, sustained, 116 C 712

defendant, driving down grade on difficult road, applied brakes, skidded and struck plaintiff, who was fixing tire on car parked at extreme side of road; verdict for plaintiff properly sustained, 117 C 343

——plaintiff not guilty of contributory negligence as matter of law in parking at side of road to fix tire instead of turning off on side road, 117 C 343

plaintiff negligently left truck parked at night on right side of four-lane road; defendant seeing it suddenly, turned to left to pass it but not far enough and trailer struck it; *held* his error in judgment in failing to turn a little further to left not negligence as matter of law, 117 C 681

plaintiff ran into trailer hitched to truck which was stalled completely across road, trailer being unlighted, three feet high, night dark and hazy; *held* no contributory negligence as matter of law, 119 C 472

——striking from finding existence of headlights of another truck as affecting plaintiff's vision nil sig., 119 C 472

whether or not truck standing on highway at night without lights was substantial factor in accident from car colliding with it, question of fact, 119 C 637

decedent struck while changing tire on car after dark which was parked without lights; doctrine of supervening negligence applicable, 120 C 412

parking of defendant's truck at night without red light in rear and so as to occupy two-thirds of lane was in violation of statute, 120 C 596

jury justified in concluding that defendant should have seen pedestrian and parked bus at sufficient distance away to have been able to stop before striking bus, 121 C 432

——whether his negligence was such an intervening cause as to break chain of causation between negligence of bus driver and accident, question of fact, 121 C 432

erroneous to charge that driver is absolutely required to give another one-half of traveled portion of highway, 121 C 432

——particularly in situation where defendant's bus has been standing on highway half a minute before collision, 121 C 432

statute de parking on traveled portion of highway at curve or turn where clear view cannot be had for one hundred and fifty feet in each direction inapplicable and court should not have charged as to it, 121 C 433

casting on running board of defendant's car struck door of plaintiff's car in passing closing it violently on plaintiff's leg; conclusion that plaintiff was not negligent, sustained, 121 C 554

plaintiff drove into rear of truck parked on highway at night without reflectors or red light; conduct of parties question of fact; plaintiff's right to assume that truck would provide safeguards required by law as bearing on due care, 123 C 402

court's finding that plaintiff's driver placed flares in front, to rear and at side of stalled truck which were visible two hundred feet made clear his compliance with statute, 125 C 605

what constituted "traveled portion" of road was question of fact and plaintiff not negligent as matter of law where he towed car to west portion of highway and left towing truck facing north, its exact position with respect to traveled portion of highway being in issue, 127 C 337

——and jury warranted in finding that negligence of drivers of two cars proceeding south which turned right to avoid truck and pinned plaintiff to rear of car he had been towing was proximate cause, 127 C 338

that snow concealed dividing line between shoulder and traveled portion of road no excuse for parking on latter, 127 C 342

where defendant's car crashed into truck which was parked at side of road loaded with trees which concealed all lights, question of negligence and contributory negligence for jury; verdict for defendant sustained, 127 C 483

§ 13. ——Stopping, Backing and Turning

not negligence per se to fail to look for approaching car before turning onto street railway track, 82 C 513, 90 C 139

trying to stop car by hand brake when quickest way was by reverse, not necessarily negligent, 85 C 102

truck backed across trolley tracks at night to unload goods; no evidence of motorman's negligence; no room for last clear chance, 102 C 238

defendant *held* liable for turning sharply to left without warning in front of plaintiff, 106 C 264

failure to give seasonable signal of intention to turn, 108 C 180

where car backed diagonally from curb into street and was struck by another, driver of former *held* negligent and latter not negligent, 108 C 560

——latter bound only to keep reasonable outlook ahead, not continuous and uninterrupted one, 108 C 560

high degree of care required of one turning from one line of travel at right angles across opposing line of travel, 109 C 602

backing automobile; signal of intention, 111 C 363

defendant's car made abrupt stop in line of traffic and plaintiff's car ran into it from rear; verdict for defendant unheld, 114 C 415

mere fact of turning is not a compliance with statutory requirement that intention to change direction is to be indicated, 115 C 464

statute de stopping, backing or turning automobile contemplates that signal be given before the act is commenced, 115 C 464

driver could not signal intent to turn left with hand because of construction of bus; *held* act of slowly turning not compliance with statute, 115 C 464

failure to give signal to turn left could be found proximate cause of accident where day was clear and there were no obstructions, 115 C 464

where a charge imposed positive duty on driver to give signal of intention to slacken speed, failure to charge as to duty of driver to anticipate traffic *held* harmless, 116 C 32

statute requiring driver before slackening his speed, stopping or backing, to give signal, is not limited to vehicles upon traveled portion of highway, 116 C 249

——statute applied where truck was backing over a portion of highway being constructed and not open to traffic, 116 C 249

right of driver to assume that no car would be turned into his path from his left without signal, 117 C 488

——if negligence of defendant created an emergency, legal responsibility to avoid accident not on plaintiff, 117 C 488

giving signal of intention to stop; application to red stop-signal in rear, 117 C 615

plaintiff drawing up on right of defendant as they approached intersection where stop-light showed red did not have right of way under statute stating that cars "overtaking" others shall pass on left, though street was broad and plaintiff did not intend to pass defendant, 117 C 619

——statute imperative and applies to all vehicles overtaking others, 117 C 619

jury might find that failure of defendant driver to signal intention to stop, back or change course was not proximate cause where motorman testified he saw automobile when some distance away standing in street, 117 C 665

car in which plaintiff was riding stopped in line of traffic, its automatic stop-light signal operating and defendant's car collided with it from rear; verdict for plaintiff properly sustained, 117 C 685

finding that defendant brought car to sudden stop without sufficient signal or warning to those following justified conclusion that he was negligent, 117 C 691

——and plaintiff not guilty of contributory negligence in colliding with rear of defendant's car when faced with sudden emergency, 117 C 691

plaintiff collided with truck after latter backed out of parking space onto road; former not guilty of contributory negligence, 118 C 704

——rule of passing to left of overtaken vehicle not applicable, 118 C 704

where tow-car was turned across wide highway at night and car in which plaintiff was riding collided with it, verdict for defendant sustained, 119 C 246

——test would be whether, when driver of tow-car started to drive into the north half of road, driver of other car was so close that as reasonably prudent person entitled to assume exercise of reasonable care by former, he should have known that he could not make turn in safety, 119 C 246

——driver of tow-car might assume that he was in no danger from traffic coming from opposite direction until front of car passed center of highway, 119 C 246

driver of automobile not guilty of contributory negligence in turning to left into driveway if it would reasonably appear to ordinarily prudent person that he could pass without risk of collision with approaching car, 121 C 375

——he had right to assume that driver of other car would use proper care, 121 C 375

statutes do not require operator in case of change of direction to give hand signal in preference to mechanical signal, 122 C 209

——but if vehicle be so constructed or loaded that hand signal would not indicate intention to stop or turn to both approaching and following traffic, it must be equipped with mechanical device, 122 C 209

driver approaching bicycle from rear, ridden by boy behind whom girl was seated, entitled to assume boy will observe statute de signal of change of direction until he should know assumption to be unwarranted, 125 C 60

——on facts, driver negligent in failing to give warning of his approach to bicycle, 125 C 60

——failure to give signal a substantial factor causing accident in view of hazard of sudden turn by bicycle, 125 C 60

any negligence of driver of car in which plaintiff was riding in not signalling reduction of speed not necessarily substantial factor, as other defendant in car following, which crashed into first car, might not have seen signal in view of weather conditions, 125 C 72

judicial notice not available to establish stopping distance of automobile with precision and exactitude, 125 C 219

——examples as to what extent it may be taken, 125 C 226

for driver of car in traffic to stop suddenly without giving signal required by statute justifies finding of negligence, 125 C 473

defendant's testimony that all her windows were shut not proper basis for inference that she gave no signal of her intention to turn since some kind of signal other than hand might suffice under statute, 127 C 284

conclusion that sudden stopping of car without signal causing car in rear to turn out into path of plaintiff's car was substantial factor in causing injuries, not erroneous as matter of law, 127 C 313

§ 14. ——Entering Highway from Private Way or Property

driver on highway could assume that plaintiff coming from private driveway would yield right of way, 109 C 573

where driver was coming out of blind driveway with traffic running on side nearest it, contributory negligence *held* question of fact, 109 C 573

——where it did not appear that other driver could have seen him after he got into zone of danger or could thereafter have stopped, last clear chance doctrine not applicable, 109 C 573

person coming from private right of way is bound under statute to yield right of way to one on highway, 110 C 358

driver of truck running over child in backing out of narrow driveway *held* not negligent, 112 C 692

plaintiff collided with truck after latter backed out of parking space onto road;

former not guilty of contributory negligence, 118 C 704

right of way of traveler on highway over one entering it from private driveway; application of statute not restricted to cases where collision is inevitable but applies where there is danger of collision, 127 C 374

doctrine of superseding negligence inapplicable where jury might have found accident due to negligent backing of defendant's truck out of driveway into car in which plaintiff was riding, 129 C 118

§ 15. ——Reckless Driving

reckless disregard of pedestrians in highway by autoist makes him liable for criminal negligence, 82 C 671, 83 C 437

one who drives automobile recklessly not entitled to acquittal on charge of manslaughter because he used his best efforts to avoid accident, 82 C 671

——contributory negligence of decedent no defense, 82 C 671

effect of speed law in criminal negligence, 82 C 671

as to relation of breach of statute forbidding reckless operation to recovery for negligent operation, 97 C 478

negligence and wanton or reckless misconduct to be distinguished, 97 C 478

——if charge implies that latter must be proved, it is error, 97 C 478

statute must be adequately explained to jury, 98 C 490

prudent conduct of driver in emergency will not exonerate him if his previous conduct responsible for collision, 98 C 497

three acts of "reckless driving," as defined by statute, explained, 102 C 42

——defendant liable for commission of any one of them, 102 C 42

use of term "reckless driving" to cover all acts forbidden by statute, 102 C 42

though truck skidded into plaintiff's car its driver might be guilty of reckless driving or driving at unreasonable speed, 105 C 663

speed of truck and failure of driver to keep proper lookout may be reckless and negligent operation, 105 C 693

driving "recklessly" defined, 108 C 209

penal statute must state the offense definitely and certainly; driving "recklessly" and "so as to endanger life," etc., are sufficient, 108 C 209

test under statute forbidding operation of car recklessly, 108 C 209

——operation recklessly, so as to endanger life or property and under influence of liquor are separate offenses though arising out of same transaction, 108 C 209

approaching street intersection at high speed without applying brakes till close to it and failure to see pedestrian, sufficient to support verdict for wanton misconduct, 110 C 108

fact that defendant had been drinking not sufficient basis for finding reckless operation, 114 C 473

——but may be considered with other circumstances, 114 C 473

where decedent's car collided with another and third car ran into rear of decedent's, *held* that driver of last might be found guilty of recklessness, 115 C 356

in pure negligence action contributory negligence is defense, though negligence alleged consisted in part in violation of statute forbidding reckless operation of motor vehicle, 116 C 471

it is settled rule that contributory negligence is not a defense to action based, not on negligence, but on reckless misconduct, 116 C 471

statute provides that operation knowingly with defective mechanism shall constitute violation of prohibition against reckless driving; so operator who is not owner may be found negligent for driving with defective brakes, 119 C 310

no error in charging that if jury found defendant to be reckless, contributory negligence of plaintiff's decedent would not bar recovery, 123 C 205

charge de reckless driving, 124 C 265

plaintiff's claims of proof insufficient to justify submitting issue of reckless misconduct as basis for removing contributory negligence from consideration of jury, 129 C 302

§ 16. Injuries to Persons on Foot

§ 17. ——In General

automobile driven at excessive speed hit pedestrian looking for lost article with a lantern; no contributory negligence, 85 C 112

intoxication must be proximate cause to bar recovery, 89 C 401

vehicles rapidly approaching each other; third person can assume drivers will act as ordinarily prudent men should, 92 C 594

effect of intoxication of person struck by automobile, 93 C 99

sounding of horn must be given at such distance from pedestrian as to be adequate warning, 95 C 112

right of pedestrian to assume that automobile would obey law as to stopping before passing standing trolley, 106 C 501

pedestrian killed by hit and run driver; doctrine of presumption of due care from instinct of self-preservation rejected, 112 C 86

conduct of driver in hitting woman and speeding away as evidence of his negligence, 112 C 86

——but not of her want of contributory negligence, 112 C 86
obligation of truck driver to avoid injury to trespasser when his presence in position of peril was known, 114 C 85
doctrine of supervening negligence and its application to pedestrians explained, 115 C 213
——doctrine does not apply where negligence of plaintiff continues as efficient cause down to actual occurrence of accident, 115 C 213
——only applies when plaintiff by his negligence has brought himself into a position of peril and thereafter committed no negligent act materially changing situation, 115 C 213
——does not apply until pedestrian has reached a position of peril from particular car, 115 C 213
——time when this has occurred must ordinarily be left to jury, 115 C 213
——where both pedestrian and driver proceed in their course to moment of collision, doctrine does not apply, 115 C 213
when pedestrian and automobile proceed in their course to moment of collision and former does not come into position of peril until moment he is hit, doctrine of supervening negligence has no application, 115 C 658
statute subjecting to criminal penalty pedestrian who uses highway negligently or recklessly, as applied to civil cases establishes no other standard than common law, 116 C 48
sidewalks are for exclusive use of pedestrians but remaining portion of highway is not for exclusive use of vehicles, 116 C 150
in absence of municipal or statutory regulation, pedestrian has equal rights in street with operator of automobile, 116 C 150
where car backed suddenly toward plaintiff, confronting him with an emergency, he might properly be found not guilty of contributory negligence, 118 C 702
where both pedestrian and driver of automobile proceed in their course to moment of collision and former does not come into position of peril until substantially instant he is hit, doctrine of last clear chance has no place in case, 122 C 618, 123 C 205
——doctrine cannot be extended to situation where, while injured party has not come into position of peril, defendant ought reasonably to have perceived that he was approaching that position in disregard of threatening peril, 122 C 618
court will not apply as definite rule of law a standard of duty on part of driver that would require him to come to stop when unable to see way ahead of him, 123 C 214
in absence of statute or municipal regulations pedestrian has equal rights in street with driver of automobile, 126 C 24
statute making it offense for pedestrian to use highway negligently or recklessly establishes no other standards as to negligence than those of common law, 127 C 156
whether plaintiff driver of tow truck was guilty of contributory negligence a question of fact when, in snow storm, having towed car out of driveway onto his left side of highway, he went between cars to untie tow rope, 127 C 337
——drivers of two cars which went to right of truck on shoulder of road, one stopping just before hitting plaintiff and the other striking that car and driving into plaintiff, guilty of negligence which was proximate cause of injury, 127 C 337
wheel of lumber truck delivering to premises where materials were lying around struck iron bar which snapped up and injured plaintiff; verdict against truck owner sustained, though driver could not see bar from cab, 129 C 585

§ 18. ——Crossing Street

pedestrians bound to look for automobile; when not negligent as matter of law; can rely in part on rules of the road, 95 C 431
pedestrian crossing street bound to exercise reasonable care; this may require him at intersecting streets to look ahead and behind, 96 C 631
pedestrian crossing street bound to use his senses to avoid injury, 98 C 370
right of pedestrian to cross road in front of approaching truck, 100 C 476
duty of motorist toward pedestrian at street intersection, 101 C 62
pedestrian on crosswalk struck by car rounding corner; verdict for plaintiff *held* reasonable, 102 C 756
pedestrian crossing street diagonally between intersections with back to oncoming traffic, 103 C 547
collision between automobile and pedestrian crossing street at place other than crosswalk, 105 C 49
pedestrian crossing highway is ordinarily in zone of danger for entire width as to automobiles, 105 C 611
whether pedestrian justified in crossing street upon seeing truck two hundred and fifty feet distant is a question of fact for the jury, 106 C 356
contributory negligence of pedestrian passing into street between automobiles standing at curb and struck by another, 107 C 437
stepping in front of automobile; verdict for plaintiff *held* properly set aside, 107 C 734
duty of plaintiff to give attention to direction from which traffic expected on side of street where she was, 109 C 417

plaintiff struck by automobile after crossing in front of two cars parked side by side, 109 C 417

conduct of pedestrian crossing street at night and negligence by driver, present questions for jury, 111 C 219

——charge on last clear chance examined and sustained, 111 C 219

right of driver to assume pedestrian in street will pause to let him pass, 111 C 219

defendant negligent in backing into pedestrian without warning signal or looking to rear, 111 C 363

plaintiff in exercise of due care though crossing street at point other than crosswalk, 111 C 363

pedestrian stepping from curb into street was struck by automobile, 111 C 723

pedestrian crossing in front of standing trolley has right to assume that no automobile would be passing at such speed that it could not avoid hitting him, 112 C 399

plaintiff struck while crossing street where cars were proceeding in both directions, *held* entitled to recover, 112 C 668

pedestrian *held* entitled to recover when struck while crossing street, 112 C 677

plaintiff permitted to recover where he crossed highway knowing that automobile was approaching but judging that he had sufficient time, 113 C 730

plaintiff who passed between parked cars into street, allowed recovery where her vision was obstructed by other cars moving in street, 113 C 755

recovery upheld where plaintiff crossing street saw car coming, thought he had time and did not look again, 114 C 717

plaintiff crossed street on dark night and walked in front of automobile; judgment for defendant sustained, 114 C 733

automobile striking pedestrian crossing road; upon facts most favorable to plaintiff jury was not justified in verdict based on doctrine of last clear chance, 115 C 179

pedestrian injured by automobile; doctrine of last clear chance *held* not applicable, 115 C 267

where evidence of every witness was that plaintiff's car was but twenty-five feet away when decedent stepped from place of safety into street *held* doctrine of supervening negligence not applicable, 115 C 658

verdict for pedestrian struck by automobile properly sustained, 115 C 709

pedestrian crossing wide highway to middle line and then pausing to wait opportunity to cross other half in safety not guilty of contributory negligence as matter of law, 116 C 48

——he may reasonably assume that cars will keep on their right half of road, 116 C 48

plaintiff crossing road in diagonal direction with back to traffic from north and without making use of faculties guilty of contributory negligence, 116 C 210

——and negligence of bus driver in inviting him to cross road would not absolve plaintiff from duty of using reasonable care, 116 C 210

doctrine of supervening negligence not applicable where under plaintiff's proof he was almost across street and would not have been struck had car not swerved, and where under defendant's proof he came from behind another car directly into path of defendant's, 116 C 262

pedestrian crossing highway and injured by automobile may be guilty of contributory negligence but he does not assume risk of negligence of party causing accident, 116 C 288

defendant driving thirty miles an hour through thickly settled part of city struck pedestrian crossing street near intersection; verdict for plaintiff properly sustained, 116 C 716

——position of car after accident not conclusive where it skidded on wet pavement, 116 C 716

jury could reasonably reach conclusion that defendant did not sustain burden of proving plaintiff's decedent guilty of contributory negligence under 1931 statute, 116 C 716

defendant struck pedestrian between parked cars and trolley tracks, latter having looked to left as she left curb but at no time thereafter; conclusion that she was guilty of contributory negligence and that defendant was not guilty of negligence sustained, 116 C 724

pedestrian looked to left before crossing street, waited for automobile coming from right to pass, then did not look to left again until he was sixteen feet across street, though vision to left was limited to three hundred feet; conclusion of contributory negligence upheld, 116 C 726

plaintiff looked ahead on crossing street and saw defendant's car but did not look again; had time to cross except for defendant's unreasonable manner of operation, latter going fast and looking elsewhere; defendant infirm and had poor eyesight and these conditions real cause of accident; judgment for plaintiff sustained, 117 C 696

pedestrian walking to center of street, then suddenly dashing back when he saw taxi approaching on intersecting street guilty of contributory negligence, 118 C 694

duty of truck driver rounding busy corner to have truck under control and keep proper lookout for pedestrians, 118 C 707

——and pedestrian who looked before stepping off curb and then did not look again

while he was taking few steps not negligent as matter of law, 118 C 707
rear end of truck which turned sharply to left struck pedestrian standing in highway; verdict for latter sustained, 119 C 175
——and jury warranted in drawing inferences as to his position and conduct at moment of accident from evidence as to them immediately before, 119 C 175
mere fact that plaintiff was struck while defendant was operating car on left of center of highway not conclusive of latter's negligence, 119 C 178
——proof that such operation constituted failure to exercise reasonable care and was proximate cause necessary, 119 C 178
intestate standing on east side of road could reasonably assume vehicle approaching from north would keep on west side, 119 C 335
——not negligent as matter of law in failure to see truck approaching on its left side, 119 C 335
conduct of plaintiff in running or jumping backward into course of car proximate cause of accident, 119 C 695
decedent struck in street by car and killed; considering presumption of due care jury's finding that she was not negligent reasonable, 119 C 699
plaintiff struck crossing street; claims of proof amended to add that defendant should, if properly attentive, have seen him when he entered path of car in time to avoid striking him; charge de supervening negligence then required, 120 C 255
plaintiffs crossing at street intersection struck by defendant's truck which did not slacken speed or sound horn; verdict for plaintiffs sustained, 120 C 445
driver could be guilty of negligence where he saw defendant standing on curb from which she started to cross street and he did not see her again until the collision, 121 C 342
where facts indicate that pedestrian who sees automobile approaching, acting reasonably would have crossed street, or that reasonable men might differ as to this, question of fact for jury, 123 C 205
——where jury must have found that pedestrian was negligent in failing to see automobile and this negligence was cause of injury, question one of law for court, 123 C 205
where intestate struck by automobile while crossing street at night in diagonal direction not at crosswalk, it was for jury to determine if negligence contributed to injury and charge of court was appropriate to situation, 123 C 205
car struck pedestrian who was crossing street and was not seen by driver until within four feet of him; doctrine of supervening negligence not in case, 123 C 291
where pedestrian started to cross street when car was three hundred feet away and driver had unobstructed view afforded by arc light and headlights, error to charge no evidence that driver should have seen him, 123 C 291
court not in error in applying doctrine of last clear chance, since it could find that first two conditions had been met, 123 C 585
——but it was correct in its conclusion that plaintiff had proved neither of last two conditions, 123 C 585
pedestrian wearing dark clothes and crossing dark street; question of his contributory negligence one of fact, 123 C 588
pedestrian run over while crossing street; differing degrees of care depending on whether he was on crosswalk or way was an alley within exception in statute, 123 C 662
pedestrian crossing street at intersection struck by automobile; plaintiff's verdict, set aside by trial court, upheld on appeal, 124 C 116
whether failure of pedestrian, who looked up and down street as he left curb, to look again while crossing street was negligence, question of fact not law, 124 C 482
pedestrian entitled to assume driver of car will proceed with reasonable care as to speed, control, lookout and warning and with due regard to rights of pedestrians traversing crosswalks, 124 C 485
pedestrian entitled to assume that car will obey rules of road and pass to right of center of intersection, 124 C 692
pedestrian entitled to recover where after looking both ways she proceeded to cross street and was struck near opposite side by car driven to left of intersection, 124 C 692
conclusion that plaintiff suffering from defective vision, struck by truck near intersection, was contributorily negligent, correct, 125 C 219
——finding could not be corrected to state that accident occurred within limits of crosswalk, 125 C 223
automobile swerved to avoid other pedestrian and struck plaintiff who was waiting on other lane of highway to let it pass; judgment for plaintiff upheld, 125 C 366
where plaintiff looked before she started crossing and again when she reached center of street but did not see approaching car, question of contributory negligence one of fact, 125 C 730
while drivers not held to as high degree of care as to pedestrians at other places as they are at crosswalks, they are not absolved of all duty, 126 C 22
where decedent left position of safety while walking on side of road and started across

it toward path of approaching automobile, and did not come into position of peril until struck, doctrine of last clear chance has no place in case, 126 C 574

truck driver negligent in not seeing pedestrian and avoiding accident, 126 C 716

——pedestrian not contributorily negligent as matter of law, 126 C 716

on facts jury could not have found reckless misconduct and court did not err in failing to submit this issue, 127 C 79

refusal to set aside verdict for pedestrian who was run into by defendant as she was standing still in middle of street, sustained, 127 C 156

statute de crossing street against red light does not apply to pedestrian marooned in middle of street after getting off trolley, 127 C 156

contributory negligence of pedestrian, killed by automobile while crossing street, was question of fact for jury, with burden upon plaintiff to prove it, 127 C 297

——they might have found that plaintiff failed to prove traffic light was set against decedent, 127 C 301

negligence of defendant in running into pedestrian and contributory negligence of latter, questions of fact for jury, 128 C 53

——pedestrian's conduct in proceeding to middle of highway and awaiting chance to cross other half in safety not negligence as matter of law, 128 C 55

pedestrian, observing car approaching more than seventy-five feet away, might reasonably have assumed that he had time to cross street without looking again, 128 C 332

——especially since he could assume driver would proceed with reasonable care as to speed, control, lookout and warning, 128 C 333

finding that plaintiff was on crosswalk at time she was struck by automobile could not be corrected; determination as to who was at fault was peculiarly question of fact, 128 C 470

whether driver should have seen pedestrian crossing street in time to avoid accident by stopping or swerving was question of fact, 128 C 605

test of contributory negligence of pedestrian crossing street who looks in both directions, 128 C 605

——this is ordinarily question fact, 128 C 605

reasonable basis to determine that driver of truck was negligent in striking ten-year-old boy as he ran diagonally across intersection, 129 C 203

plaintiff struck by automobile in crossing intersection not negligent as matter of law, 129 C 302

§ 19. —— Getting on and off Vehicles

one alighting from trolley failing to look for passing vehicle; not negligence per se, 83 C 174, 88 C 256, 710

in alighting from trolley, not necessarily negligent not to look for automobile, 88 C 710

running automobile at excessive speed at street corner where car discharges passengers is gross negligence, 94 C 257

one awaiting approach of trolley car not necessarily reckless of his own safety, 99 C 11

——statute de pedestrians' use of highways, applied to facts, 99 C 11

——to be considered with all the evidence de conduct of pedestrian, 99 C 11

bus let off young boy on macadam of road when automobiles were approaching; verdict for plaintiff sustained, 113 C 408

recovery by child who alighted from school bus, saw automobile a considerable distance away and walked around back of bus before being struck, 114 C 592

person crossing shoulder of road with intention of entering bus which has stopped at edge of concrete is not passenger but merely traveler, 120 C 589

——bus driver owes him merely duty of exercising reasonable care, 120 C 589

that presence of pedestrians beside road created emergency, no excuse where driver of automobile should have seen them in time to avoid striking them, 121 C 432

bus let off passenger at dangerous spot in intersection and after alighting she was struck by automobile; claim that upon physical facts she was guilty of contributory negligence not sustained, 126 C 127

——that verdict absolved automobile driver nil sig. on this question, 126 C 127.

§ 20. ——Walking Along Highway

violation of law of road, in turning to left instead of right to avoid car approaching from rear, will not preclude recovery unless proximate cause of injury, 89 C 697

pedestrian in highway killed by automobile going in same direction, 95 C 75

not necessarily negligence when pedestrian steps off concrete roadway to let car pass and fails to look behind before stepping back, 95 C 111

automobile approaching persons on highway; if in sight for four hundred feet, "last clear chance" doctrine peculiarly applicable, 97 C 59

——duty to warn may be so clear that court can state it as matter of law, 97 C 59

duty of one in or near traveled portion of highway to use senses to look out for automobile; effect of intoxication, 99 C 632

one has right to walk in any part of highway; must use care proportionate to dangers of his position, 107 C 304

one walking in traveled portion of highway must use greater care than on sidewalk, 107 C 562

driver not negligent as matter of law where he runs into pedestrian walking in same direction on dark road, 109 C 206

——though he did not see him until just before accident despite having lights complying with law, 109 C 206

jury to determine whether pedestrian in dark suit walking along dark road with back to approaching traffic is guilty of contributory negligence, 109 C 206

pedestrian testified he was walking on shoulder of road when struck from rear but he was found partly on concrete; physical facts *held* not such as to justify setting aside verdict for him, 112 C 658

recovery permitted where pedestrian walking along side of street pavement was struck and killed, 113 C 274

——lack of contributory negligence *held* sufficiently based on slight circumstantial proof, 113 C 274

straight road, clear night, good lights on defendant's car entitled plaintiff, whose horse was struck, to charge on supervening negligence, 114 C 383

pedestrian not guilty of negligence as matter of law in walking upon roadway, even if sidewalk is usable; is required to use greater care, however, 116 C 150

driver is charged with notice of right of pedestrian to walk on roadway; precautions required of him, 116 C 150

pedestrian overtaken and struck by automobile, while walking on left side of dark road, though there was sidewalk, dressed in dark clothes; verdict for plaintiff sustained, 116 C 150

——and jury's conclusion that defendants had not established negligence of decedent, as required by statute, upheld, 116 C 150

pedestrian walking on portion of way customarily used by vehicles must use greater care, whether way be public or private, 116 C 389

plaintiff guilty of contributory negligence as matter of law when he was walking in line of traffic and suddenly turned left without warning or looking behind into path of defendant's car, 117 C 534

——bound to exercise degree of care commensurate with hazard, 117 C 534

——and doctrine of last clear chance not applicable where defendant's car was but twelve feet behind him and going twenty-five miles an hour, 117 C 534

jury might reasonably conclude that defendant was negligent in failing to see plaintiff walking ahead of him on shoulder of road and in driving out on shoulder and striking her, 118 C 431

case involved consideration that plaintiff dressed in black was walking in middle of road at night in sparsely settled region; *held* defendant not negligent as matter of law in proceeding without slackening speed when vision momentarily impaired by another's headlights, 123 C 214

struck by automobile while walking in road though there was footpath; operator blinded by lights of another vehicle; judgment for defendant sustained, 125 C 354

bus driver was negligent in rounding sharp curve at night at excessive speed and failing to keep proper lookout for pedestrians, 129 C 160

——whether or not pedestrian was intoxicated was question of fact; even if he was that would not constitute contributory negligence as matter of law, 129 C 163

§ 21. —— On Sidewalk or Near Highway

hitting fence in driving through an opening; fence fell on plaintiff, 99 C 681

two cars collided and killed plaintiff standing on sidewalk; *held* verdict against both defendants justified, 106 C 447

wheel came off truck and struck pedestrian on sidewalk; res ipsa loquitur *held* applicable, 107 C 201

pregnant woman on sidewalk near automobile collision fainted, fell and suffered miscarriage; fact that results could not be anticipated by drivers no reason for denying liability; jury might find negligence proximate cause of injuries, 115 C 650

cars of two defendants collided at street intersection and one of them was driven on sidewalk and killed plaintiff's decedent; verdict against both defendants properly sustained, 115 C 711

driver entering intersection swung left and onto sidewalk on opposite side injuring pedestrian, claiming sudden emergency caused by another car and trolley; verdict for plaintiff properly sustained, 119 C 63

while pedestrian on shoulder of road after having crossed highway is not excused from reasonable care, such care requires less of him than on road itself, 126 C 345

verdict for plaintiff improperly set aside where jury must have fixed point of accident on shoulder and plaintiff not guilty of contributory negligence as matter of law in this situation, 126 C 345

traveled portion of highway does not include dirt shoulder, as regards pedestrian using it, 126 C 348

failure of truck driver to signal intention to make turn at intersection was substantial factor in causing injury to persons on sidewalk thirty feet away who were struck by another car deflected from its course, 128 C 437

——persons on sidewalk are too liable to suffer injury from negligence of drivers not to be within class of those entitled to protection from negligence, 128 C 437

§ 22. ——Workmen

man working in a manhole; absence of red light and knowledge of approaching car, 83 C 183

right of policeman to assume that automobile by which he is standing, clearly visible, will not be hit by another approaching car, 97 C 153

measure of duty where presence of workmen on highway anticipated does not obtain at 8:30 p. m., 114 C 345

truck on subgrade backed without warning signal and ran over plaintiff who was working there; question of negligence and contributory negligence, one of fact and verdict properly sustained, 116 C 249

truck driver entered on road under construction disregarding warning of watchman and though seeing workman on running board of another truck gave no warning of approach and struck workman as he got off it; verdict for plaintiff properly sustained, 116 C 718

——duty of defendant to exercise care proportionate to danger inherent in situation, 116 C 718

——plaintiff entitled to assume that he would exercise such care, 116 C 718

where workman is in middle of roadway with trucks approaching from opposite directions, in position of danger, but in pursuance of duty, his conduct not to be judged upon same basis as pedestrian crossing highway, 120 C 553

——issue of negligence and contributory negligence should have been submitted to jury, 120 C 553

workman holding timber injured by passing car which struck it; driver not negligent as matter of law in absence of finding that she saw or should have seen timber extending into roadway, 123 C 683

workman entitled to assume that bus driver would pay attention to sign "Men Working" and not go so close to truck as to hit person stepping therefrom, 126 C 29

selectman who stood in highway to stop traffic from proceeding over oiled road was injured when he jumped to avoid being struck by truck; failure of driver to slow down and turning to side where plaintiff stood waving arms, sufficient for conclusion of negligence, 128 C 581

——this was so whether or not driver knew plaintiff was engaged in directing traffic, 128 C 583

——and court found that failure of plaintiff to place warning signs was not substantial factor, 128 C 584

——erroneous statement in finding as to direction plaintiff jumped to avoid being struck was inadvertent mistake which had no bearing on conclusion, 128 C 581

§ 23. ——Children

contributory negligence of eleven-year-old boy who runs across street, where automobile on wrong side, 83 C 73, 92 C 690

measure of duty owed by child, 92 C 681

boy of seven may be guilty of contributory negligence, 94 C 196

contributory negligence of child of six for jury, 95 C 206

duty with respect to children suddenly appearing from behind loaded team, 98 C 143

driver not bound to anticipate that boy would alight in his path from moving truck, 100 C 192

verdict for plaintiff sustained where driver of automobile sees child about to cross in front of him, has abundant opportunity to make safety sure, yet proceeds on his own idea of probabilities, 102 C 567

defendant made left turn across path of children sliding down hill; verdict for plaintiff upheld, 108 C 505

child of five permitted to recover though there was no direct proof that driver should have seen her before injury or as to how accident happened, 109 C 58

——in absence of evidence that driver saw child, defects in brakes could not be proximate cause of accident, 109 C 61

little care to be expected of child of five in calculating danger from distance and speed of approaching car, 109 C 91

driver of truck running over child in backing out of narrow driveway *held* not negligent, 112 C 692

bus let off young boy on macadam of road when automobiles were approaching; verdict for plaintiff sustained, 113 C 408

that truck was driving on left side of road, about to make a turn to the left, sufficient to establish negligence in running over boy on sled coming from cross street, 113 C 522

nineteen-year-old boy with view obstructed by trolley proceeded behind it directly into path of automobile; verdict for him properly set aside, 113 C 727

recovery by boy struck on truck on private right of way sustained, 114 C 85

——where driver of truck saw boy in time to avoid accident, doctrine of last clear chance applies, 114 C 85

recovery by child who alighted from school bus, saw automobile a considerable distance away and walked around back of bus before being struck, 114 C 592

truck driver ran over child coasting out of driveway where he could not see it; verdict for defendant sustained, 114 C 709
conclusion that defendant was not aware that child who ran across was in peril until it was too late, upheld, 114 C 727
physical facts *held* not such as to preclude adoption by jury of testimony for plaintiff of where he stood when struck by defendant's truck, 115 C 457
small boy on north lane of highway struck by truck proceeding easterly; jury justified in concluding negligence of driver sole cause of accident, 119 C 277
standard of care required of child, 120 C 46
conclusion that fourteen-year-old boy was negligent in attempting to cross street on his scooter, sustained, 120 C 702
child of five struck by automobile; how long before accident she was seen and what she did in interval did not appear in evidence nor facts from which inference could be drawn; verdict properly directed for defendant, 121 C 710
evidence of boy's experience and judgment sufficient to enable jury to compare his conduct with that of other children and to sustain verdict for him, 125 C 450
ten-year-old boy failed to use care expected of boy of similar age, judgment and experience in going in front of truck, and this failure was proximate cause of death, 127 C 645
jury could find that boy killed by automobile exercised such care as might reasonably be expected of children of similar age, judgment and experience, 128 C 182

§ 24. Passengers; Guests

§ 25. ——In General; Liability of Driver; of Third Party
See also CARRIERS, § 7.

proximate cause where automobile driver too near trolley and steering gear breaks, 88 C 494
persons invited to ride on a truck by a gratuitous bailee in no better position than the bailee, 95 C 251
in action against third party by guest in an automobile, law de right of way at intersecting street relevant, 95 C 263
liability of driver of car to those riding on it without his permission, 95 C 572
degree of care required of operator toward passenger, 98 C 88
driver of automobile owes no duty to trespassers on the vehicle until they are discovered; owes no duty to look for them, 99 C 474
duty of private carrier for hire to furnish safe car and competent driver, 99 C 580
concurring negligence of third person no defense, 100 C 508
concurring negligence of driver of car in which plaintiff is riding with driver of colliding car; such negligence may be found though not pleaded, 103 C 41
duty of motorist approaching crossing; cannot rely on passenger's assurance that no train is coming, 107 C 417
stopping car is implied invitation to passenger to alight; issue of negligence and contributory negligence for jury, 108 C 628
charge in action against driver of car in which passenger was riding and driver of one which collided with it, upheld as regards combined negligence, 109 C 77
verdict in favor of guest and against driver in suit by them against driver of another car upheld, 115 C 112
though plaintiff guest alleged that she and driver were both free from negligence, evidence of defendant that driver was negligent justifies submission of issue of concurrent negligence, 115 C 112
by law of Massachusetts, in absence of claim of wanton or reckless misconduct, guest can recover only on proof that operator was guilty of gross negligence, 116 C 545
——upon facts *held* that jury might have reached conclusion of gross negligence within meaning of that law, 116 C 545
one defendant sued for heedless disregard and the other for negligence; each responsible for entire damage if his wrongful act was substantial factor; no contribution between them, 116 C 569
——and error in charge as to one, not prejudicial to other, 116 C 569
liability of negligent driver of car to guest in another car though driver of latter car was guilty of concurrent negligence, 116 C 576
conclusion that plaintiff's intestate, not defendant, was driving car at time of accident, justified, 117 C 214
both plaintiff's and defendant's intestate in same car killed in collision, and no direct testimony; *held,* upon facts, question of negligence and contributory negligence too conjectural to warrant verdict against defendant, 117 C 271
under law of Massachusetts, in absence of claim of wanton or reckless misconduct, guest can recover only on proof that operator was guilty of gross negligence, 117 C 428
conclusion that defendant was negligent in driving around corner at too high speed and that plaintiff who was riding sitting on sand bags and was thrown out was in exercise of due care, sustained, 119 C 204
verdict for passenger against operator of car who drove out of private drive disregarding right of way onto slippery highway

when he could see truck approaching, sustained, 127 C 374
where passenger injured by car skidding on icy road, negligence of driver was proximate cause of injury under the circumstances, 129 C 57
verdict for passenger of car hit by truck which negligently backed out of driveway, 129 C 118

§ 26. ——Duties of Passenger or Guest; Contributory Negligence; Assumption of Risk

contributory negligence of passenger in another's automobile struck by a trolley, 83 C 219
——effect of driver's negligence, 83 C 219, 89 C 707
duty of occupant of automobile to warn driver, 83 C 219, 93 C 438
negligence of owner or driver of motorcycle will not be imputed to one riding with him as invited guest, 89 C 707
imputing negligence of driver to passenger, 92 C 341
negligence of driver not to be imputed to guest on back seat, 93 C 438
——latter may sleep, read or meditate, 93 C 438
——but must give warning of known danger, 93 C 438
loan of automobile; obligation of owner to disclose defects, 95 C 251
——guest of borrower occupies no more advantageous position than borrower, 95 C 251
negligence to ride with foot protruding; whether proximate cause, is for jury, 95 C 442
passenger riding with leg over the side is negligent as matter of law, 97 C 271
duty of passenger riding backwards, 99 C 573
——remarks of other passenger as to speed of car is immaterial, 99 C 579
——where it does not appear what he could or should have done, any negligence on his part could not be said to be proximate cause of injury, 99 C 573
contributory negligence of plaintiff jumping from running board of truck to avoid collision as question of fact, 100 C 189
——conduct in face of imminent danger, 100 C 192
negligence of driver not imputable to passenger, 100 C 508
boy climbing out on fender of truck to investigate engine trouble and brushed off by another truck; contributory negligence and last clear chance, 101 C 579
passenger not bound to guard against operator falling asleep; nor is he guilty of contributory negligence in sleeping, 103 C 583
guest's belief or fear, from past experience, that driver may be careless, does not make him contributorily negligent in accepting ride, nor does he assume any risk, 105 C 521
knowledge of past carelessness of driver may impose upon guest duty of greater watchfulness, 105 C 521
guest in vehicle should not ordinarily give directions or advice; best course is usually to let driver alone, 105 C 521
passenger riding in overcrowded car not necessarily guilty of contributory negligence, 106 C 82
passenger giving driver wine to drink not necessarily guilty of contributory negligence, 106 C 231
physical conditions after accident, *held* not to require finding that passenger injured because head protruded from car, 106 C 231
plaintiff *held* not guilty of contributory negligence in riding with driver who had license only fifteen days and in five-passenger car in which were four adults and three children, 107 C 86
it is contributory negligence to enter car if reasonably prudent person would not do so where driver was known to be intoxicated, 107 C 91
conduct of guest plaintiff measured by that of ordinarily prudent person under similar circumstances, 107 C 91
guest plaintiff may testify as to observation of defendant's driving on previous occasions to show no reason to anticipate negligence, 107 C 91
ccntributory negligence in jumping from car, 107 C 96
duty of guest to exercise care is very limited, 109 C 144
——but if he knows or should have known that operator is not exercising care, action on his part may be called for, 109 C 144
contributory negligence no defense to action based on wilfulness or wantonness, 109 C 428
duty of gratuitous passenger to exercise due care; authorities discussed; approaching grade crossing, 112 C 279
passenger knowing locality with which driver was unfamiliar *held* guilty of contributory negligence in failing to take precaution when approaching grade crossing, 112 C 279
verdict for passenger in car, improperly set aside where driver's contributory negligence was not attributable to him, 112 C 286
passenger in rear seat of automobile which skidded onto trolley tracks *held* not guilty of contributory negligence in failing to get out, 113 C 30
Texas law as to duty of guests in car to exercise care; as in this State, guest under no duty to give instructions to driver; question

of contributory negligence is for jury, 113 C 302
contributory negligence not a defense to cause of action under guest statute, 115 C 503, 116 C 471, 117 C 97
fact that contributory negligence is not defense to action based upon reckless misconduct under guest statute does not prevent defense of assumption of risk in proper case, 116 C 283
mere possibility known to guest in automobile that driver may be guilty of negligence not sufficient basis to hold he has assumed that risk, 116 C 283
——it is only when negligent conduct has actually ensued that there can be assumption of risk incident to it, 116 C 283
young girl and elderly lady guests in rear seat of defendant's car heard discussion of driver's sleepiness as he was driving up mountain at night and accident occurred shortly thereafter; *held* could not be said as matter of law that they appreciated risk, 116 C 283
——and jury could not reasonably find that by continuing in car they voluntarily chose to assume risk, 116 C 283
defense that plaintiff recklessly exposed himself to danger in riding with incompetent driver, differs from one of assumption of risk, 117 C 97
passenger in an automobile has no duty to direct its operation, 117 C 174
if passenger knew operator had driven recklessly on former occasions, such knowledge not contributory negligence, 117 C 619
——might be circumstance imposing on her duty, such as of greater watchfulness, 117 C 619
conclusion that defendant was negligent in driving around corner at too high speed and that plaintiff who was riding sitting on sand bags and was thrown out was in exercise of due care, sustained, 119 C 204
where woman rode on front fender of car going thirty-five miles an hour on traveled road, and was thrown off in collision, she was negligent as matter of law and this negligence was bar to recovery, 119 C 207
whether passenger in bus stopped on dangerous curve and injured when automobile struck it from rear, was guilty of contributory negligence in causing bus to stop at that point is question of fact, 121 C 441
negligence of plaintiff's son, who was driving car in which she was riding, not imputable to her, 122 C 542
——and if son's negligence concurred with that of defendant as substantial cause of accident, latter would still be liable, 122 C 542
contributory negligence of operator not imputed to passenger, 126 C 412
that passenger could not reasonably have been found guilty of contributory negligence did not entitle her to verdict against driver of another car where her driver's negligence might have been found proximate cause, 127 C 285
where decedent was crushed between defendant's truck, on running board of which he was riding, and tractor trailer of other defendant, his negligence not proximate cause as matter of law, 129 C 1
conduct of plaintiff in riding in truck with right leg outside sideboard not contributory negligence as matter of law, 129 C 31
though plaintiff put her head back and went to sleep knowing icy condition of road, her contributory negligence question of fact, 129 C 57
where there was nothing to charge passenger with knowledge or comprehension of risk of defendant's negligent driving, conclusion that she did not assume risk correct, 129 C 57

§ 27. ——Guest Statute Generally

NOTE: The guest statute was repealed in 1937.

"heedlessness" ordinarily means negligence; but not in automobile guest statute in view of context and purpose, 108 C 371
law limiting liability to guest to intentional injury or one due to heedlessness or recklessness sustained, 108 C 371
intention of guest statute to change existing law, 109 C 428
"or caused by his heedlessness or his reckless disregard of the rights of others" in guest statute construed, 109 C 428, 110 C 1
——constitutes wanton misconduct, 109 C 428
"intentional" in guest statute construed, 109 C 428
wanton misconduct defined; wilful misconduct, 109 C 428
difference between action for negligence and for wilful or wanton misconduct, 109 C 428
where under statute reckless misconduct is charged, court need not define intentional misconduct, 109 C 428
recovery of guest in automobile under statute for reckless misconduct is not based on negligence, 109 C 428
guest statute excludes by necessary implication action for negligence, 109 C 517
——allegation of negligence improper unless plaintiff intended to attack constitutionality or sought new construction, 109 C 517
claim that "heedlessness" in guest statute introduces new degree of negligence erroneous, 109 C 517
proper instruction de phrase "caused by his heedlessness or his reckless disregard of the rights of others," 109 C 517
submission of case under guest statute as action for negligence and instruction that

plaintiff must prove freedom from contributory negligence *held* erroneous, 109 C 517
where three is no claim of intentional misconduct in complaint, this may be disregarded in charge, 109 C 517
under guest statute operator of car with defective brakes liable only if defect caused by "heedless or reckless disregard of rights of others," 109 C 654
conduct arising from momentary thoughtlessness, or from error of judgment does not indicate reckless disregard, 110 C 1
wanton misconduct defined, 110 C 169
under statute whether conduct of driver would constitute criminal negligence, nil sig., 110 C 246
charge upheld as correct by defining negligence within meaning of statute, 110 C 540
——the word "intentional" refers to intentional misconduct, 110 C 545
——if to be claimed on trial, it must be pleaded, 110 C 545
right of action for negligence is vested and cannot be taken away by act validating guest statute, 112 C 145
act not having been approved by Governor within constitutional time limits was void, 112 C 145
——later act cannot make it applicable to injury occurring before passage of that act, 112 C 145
under ruling in State v. McCook (109 C 621) guest statute is unconstitutional, 112 C 676
fact that defendant had been drinking not sufficient basis for finding reckless operation, 114 C 473
——but may be considered with other circumstances, 114 C 473
doctrine of res ipsa loquitur only applicable where accident ordinarily would not happen except by fault in operation, 114 C 473
——fact that front tire was blown out not sufficient basis, 114 C 473
——court considered well-known physical fact that blowing out of tire may cause accident, 114 C 473
intention of guest statute to limit liability to cases of intentional misconduct, or heedless or reckless disregard of rights of others, 114 C 588
mechanical defects in car known to defendant relevant to issue of heedless and reckless conduct as well as of ordinary negligence, 114 C 668
purpose of guest statute is to restrict liability to gratuitous passengers, 115 C 186
——unless facts bring case clearly within terms and intent of statute, recovery refused, 115 C 186
right of guests in automobile to recover for injuries suffered in Rhode Island, governed by its laws, 115 C 493
statute as to recovery by guest should not be extended beyond correction of evils and attainment of permissible social objects which were cause of its enactment, 115 C 692
in action under guest statute decision as to whether accident was caused by heedless or reckless misconduct is one of fact for jury, 116 C 78
——standard of conduct is fixed by statute but not applied, 116 C 78
in determining whether verdict in action under guest statute was one which jury could reasonably reach, same rules are applied as in ordinary negligence action, 116 C 78
——when conclusion is reasonably reached on conflicting evidence it should stand, 116 C 78
in action under guest statute, test is reckless disregard of rights of others and jury determines as fact if conduct is of that character, 116 C 237
——when conclusion of jury is reached upon conflicting evidence, it must stand unless reasoning minds could not reach such conclusion, 116 C 237
Massachusetts rule permits recovery upon proof of lesser degree of misconduct than under our guest statute, 116 C 545
to furnish basis of recovery under guest statute, reckless misconduct must have been substantial factor in bringing about injuries, 116 C 672
——if defendant was guilty of such misconduct on other occasions during drive which was in no way cause of accident it would not justify recovery, 116 C 672
——sometimes occurrences before or after accident may be sufficient to characterize conduct which produced it as evincing reckless disregard, 116 C 672
——previous conduct and warnings given defendant *held* not material where finding negatived misconduct as substantial factor, 116 C 672
question whether defendant was guilty of reckless misconduct is one of fact for jury, 116 C 715
liability under, limited to cases of intentional misconduct and heedless and reckless disregard, 117 C 9
no recovery can be had in action under guest statute upon ground of negligence, 117 C 101
driver going to sleep as reckless misconduct, 117 C 428
reckless misconduct under guest statute, if it differs from gross negligence under Massachusetts law, is of more serious character, 117 C 432
conduct arising from momentary thoughtlessness, inadvertence, or from an error of judgment, not reckless disregard of rights of others, 117 C 513

——applied where only evidence was speed and fact that driver just prior to collision and as car ahead was slowing down momentarily turned eyes to friend on front seat, 117 C 513

evidence must show indifference to consequences of driver's conduct, or reckless disregard of or indifference to safety of passenger; cases reviewed, 118 C 625

——speed alone does not spell reckless operation, 118 C 625

unless conduct of owner or operator of car falls within terms of guest statute, it does not constitute wrong to minor guest and hence not basis for recovery by parent for services, 119 C 75

——negligent act of owner or operator invaded rights of parent, since guest statute made no reference to anyone except person transported (dis.), 119 C 81

whether conduct constitutes heedless and reckless disregard is question of fact for jury whose verdict on conflicting evidence will not be disturbed if reasonable, 119 C 237

——when defendant is guilty of no more than momentary thoughtlessness or inadvertence jury cannot reasonably find reckless disregard, 119 C 237, 238

——when conduct is persisted in despite warnings and knowledge of danger involved question is one of fact for jury, 119 C 238

one year Statute of Limitations *held* to apply to actions brought under guest statute, 119 C 500

judgment obtained by guest in automobile against owner for reckless disregard of his rights is not a liability for "wilful and malicious" injury within meanng of Bankruptcy Act excepting such liabilities from discharge, 119 C 532

——wilful and malicious injury is one inflicted intentionally without just cause or excuse, 119 C 532

——distinction between such act and one which was intentional in the sense that it was voluntary, 119 C 532

——distinction between reckless misconduct and negligence on one hand and intentional misconduct on other, 119 C 532

jury are entitled to consider natural reaction produced upon persons riding in car and witnesses of accident by operator's course of conduct, 120 C 523

skidding not evidence of negligence, still less of reckless misconduct, 121 C 123

distinction between momentary thoughtlessness or inadvertence and course of conduct persisted in despite warning and knowledge of danger involved, 122 C 621

§ 28 ——Persons Within Statute

wife of driver as guest within statute, 108 C 374

under statute whether one was guest is question of fact, 108 C 628

——if transportation was for mutual benefit, passenger is not guest, 108 C 628

——as where woman was being brought to house where she was to work, by employer, 108 C 628

one who has taken his position in car for immediate transportation is within statute though car has not started, 111 C 88

reciprocal advantage which exclude one transported free of charge from classification as guest confined to certain definite relations, 114 C 400

——plaintiff being transported in ambulance maintained by the American Legion, without charge but with reasonable expectation of donation to ambulance fund, *held* a guest, 114 C 400

——ambulance maintained to transport persons without hire *held* a public carrier, so that driver was liable for ordinary negligence, 114 C 400

gratuitous passenger on truck within guest statute; can recover only upon a reasonable finding by jury that defendant operated truck in a manner to evince a heedless and reckless disregard of the consequences of harm to those riding with him or to others, 115 C 501

term "guest" in statute does not include persons transported for mutual benefit of passenger and operator or owner, 115 C 546

defendant's mechanic drove plaintiff on road test to determine if "shimmy" in latter's car had been corrected; *held* incidental to contractual relationship and case not within guest statute, 115 C 546

no helpful analogy in law of bailment in determining when transportation is for mutual benefit of parties and when gratuitous, 115 C 687

to take case out of statute, mutual benefit need not be one for which parties had bargained as consideration for transportation; but the relationship must be definite and benefit tangible, 115 C 687

defendant transported G and plaintiff, who was hired by G, to her farm knowing plaintiff was going to work on it; *held* question of whether case was within guest statute properly submitted to jury, 115 C 687

——and verdict for plaintiff on ground of negligence properly sustained, 115 C 687

whether passenger was guest, was open to serious doubt on evidence, 117 C 5

guest statute does not include one transported for pay, or for mutual benefit of himself and operator, 117 C 9

transportation was for mutual benefit of both parties and guest statute did not apply, 117 C 273

purpose of guest statute to deny recovery for negligence against one transporting a member of his family, a social guest or a casual invitee; cases reviewed, 118 C 641

reciprocal advantages which will change status from guest to one of mutual benefit confined to certain definite relations, such as master and servant, and to tangible benefits accruing to transporter, 118 C 641

where parties were members of same family, traveling in family automobile to inspect family burial lot, *held* intestate was guest within statute, 118 C 641

cases defining and limiting extent and nature of reciprocal advantages which constitute such mutual benefit as to remove passenger from status of guest, reviewed, 119 C 188

plaintiff having two passes to moving picture invited defendant, neighbor and friend, and went in latter's car; *held* no such contractual relations or tangible mutual benefit as to remove plaintiff from status of guest, 119 C 188

plaintiff, who was engaged to repair jack owned by C, drove to town with latter to get required part; *held* jury might have found mutual benefit and court erred in directing verdict for C on ground that case came within guest statute, 119 C 537

if passenger is enjoying hospitality of driver without making any return or conferring any benefit he is guest, 120 C 1

——if he is being transported for mutual benefit of himself and driver or owner he is not a guest, 120 C 1

——benefit must be tangible one growing out of definite relationship; may be incidental to such relationship, 120 C 1

——it need not be a consideration agreed upon for transportation, 120 C 1

plaintiff rode in district manager's car to business meeting of company considering he was under orders to do so though he had own car; question whether he was guest properly submitted to jury, 120 C 1

purpose of guest statute to deny recovery for negligence to member of family, social guest or casual invitee in action brought by recipient of hospitality, 121 C 102

——"guest" imports recipient of hospitality, 121 C 102

plaintiff's intestate driving defendant's car at his request on fishing trip with defendant, not guest, 121 C 102

rides given boy in defendant's truck were for his pleasure, and motive in allowing him to occasionally deliver packages was to give boy pleasure; no such "mutual benefit" as to remove boy from category of guest, 121 C 336

§ 29. ——Particular Cases under Statute

conduct of driver in looking for a moment to one side on exclamation of small son to look, with result that car collided with one in front, *held* not heedlessness or recklessness within statute, 108 C 371

statute limiting liability to guest applied where automobile ran away down hill due to brakes failing to work, 109 C 654

driver turning into driveway without slackening speed not guilty of reckless disregard of rights of others within meaning of guest statute, 110 C 1

driving at high speed on slippery road despite remonstrance of guest, *held* to bring case within statute, 110 C 169

driving down slippery hill with intersecting streets, at thirty-five miles against remonstrance of passenger, brings case within statute, 110 C 244

accident due to car running into fence as result of presence of bee in car, *held* not to present case within guest statute, 111 C 72

statute *held* not to apply where plaintiff's hand injured by driver reaching back and suddenly closing door without looking, 111 C 88

driver of car forced to edge of road in passing cars in front, where accident occurred due to wheels catching on edge of pavement, *held* not to be liable under statute, 111 C 209

driver of automobile *held* not reckless in trying to pass another car going in same direction at night, 112 C 76

conduct of driver in continuing to drive until he fell asleep as reckless misconduct, 113 C 278

recovery permitted under statute where driver attempted to pass truck to right after it had given signal of intent to turn into driveway, 113 C 788

——driver's conduct amounted to more than mere momentary thoughtlessness, inadvertence or error of judgment, 113 C 788

conduct of plaintiff in driving up steep hill with curves and slippery surface at rapid speed *held* not within guest statute, 114 C 585

——meaning of statute restated, 114 C 589

defective condition of brakes and steering gear known to defendant, in conjunction with manner he operated car *held* to have justified verdict for guests, 114 C 668

jury justified in finding defendant's conduct within guest statute where he drove speedily on dark and rainy night without headlights, 115 C 183

where defendant drove truck loaded with boys, three of whom were on running board, in narrow space between another truck and curb at high speed so that one boy was struck by pole at curb, recovery permitted, 115 C 499

——callousness of reply of defendant when charged with driving too fast after accident, as indicative of recklessness, 115 C 502

where no evidence that driver was aware of danger, or that he was warned by passenger, nonsuit in action under guest statute properly granted, 116 C 67

where driver ran into corner of truck turning across highway at night, nonsuit *held* properly granted, something more than negligence being required under guest statute, 116 C 72

——cases involving liability to guests summarized, 116 C 73

car, having no chains, in which plaintiff rode as guest tried to pass truck on narrow slippery road, after warning; *held* verdict for plaintiff properly sustained, 116 C 78

verdict for plaintiff under guest statute properly sustained where defendant, with slippery pavement, warned as to speed, did not slacken speed until within twenty-five feet of stationary trolley and then crashed into it, 116 C 237

jury could reasonably reach conclusion that there was such likelihood of defendant falling asleep if he continued to drive, of which he should have been aware, that he was guilty of reckless misconduct under guest statute, 116 C 283

where driver of car after passing another turned off to right of road and car swerved when it attempted to avoid spot in road looking like oil, *held* no reckless misconduct, 116 C 673

verdict erroneously directed for defendant in case under guest statute, where defendant, with three others in his one-seated car, crashed with great speed (at which intestate had protested) into rear of truck with lights and reflector, 116 C 713

car skidded and went over embankment killing operator and passenger; no evidence of cause, and no eyewitnesses; *held* conclusion of jury that passenger's death was caused by driver's heedless and reckless disregard not justified, 117 C 5

verdict against P Company in whose car plaintiff was riding as guest and into which another car crashed as it was leaving driveway and straightening out on highway, should have been set aside, 117 C 124

upon plaintiff's evidence, defendant being in court but not testifying, jury could conclude that accident was caused by defendant's going to sleep at wheel and that he should have realized likelihood of it, 117 C 428

defendant, driving at reasonable speed, being hungry, turned suddenly to left across line of traffic to enter driveway into inn, thinking he had time to cross in front of approaching car which struck his; *held* case not within guest statute and verdict properly set aside, 117 C 655

defendant on single track dirt road pulled to right to avoid car approaching rapidly and weaving, almost struck a pole and in attempt to right car lost control and ran off road into tree; after correction of finding, *held* case not within guest statute, 117 C C 660

where two cars at night collided at street intersection, neither driver seeing the other till they were close together, driver *held* not guilty of reckless misconduct though proceeding at forty-five or fifty miles an hour, 118 C 625

he gave no signal of intention of turning into intersection and though warned by guest of approach of another car went forward with intention of making other car stop; question of heedless disregard one of fact for jury, 118 C 632

defendant going fifty to sixty miles an hour, colliding with truck in passing it, liable under guest statute; warning by passenger, 118 C 697

defendant, despite repeated warnings, drove sixty miles an hour and crossed intersection at forty, knowing its dangerous character; was taking injured girl to hospital but her injuries were not serious and she joined in warnings; *held* jury could reasonably have found reckless disregard, 119 C 235

even driver of ambulance, which by statute has right of way over other traffic, is not privileged to drive at reckless speed while taking patient to hospital, 119 C 239

defendant, driving at excessive speed approaching curve, lost control and car upset; *held* court in error in setting aside verdict for plaintiff, 120 C 521

where no evidence that skidding was caused by reckless misconduct of driver, court correct in directing verdict for defendant, 121 C 123

where guest was injured in collision, if the negligence of driver of the other car and not the reckless misconduct of driver of that in which he was riding was the substantial factor in producing accident, latter entitled to judgment, 121 C 506

speed between thirty-five and forty miles an hour without other evidence of improper conduct, insufficient basis for finding of reckless misconduct, 121 C 698

car ran into traffic signal post at intersection which was to right of center of highway; verdict for plaintiff set aside, 121 C 700

where driver was not tired or drowsy and had no warning that sleep would overtake him, his continuing to drive until he fell asleep not reckless disregard, 122 C 621

driver momentarily falling asleep; evidence that she knew or should have known there

was danger of her doing so, necessary to make her guilty of reckless misconduct, 123 C 127
skidding into intersection; facts did not indicate reckless disregard, 123 C 226
driver of car turning left into intersection, then changing course back to original one and colliding with truck entering intersection from opposite direction *held* not guilty of reckless disregard, 124 C 88

§ 30. Negligent Operation by Another
See also MASTER AND SERVANT § 9

§ 31. ——In General
in loaning a truck need disclose only defects that make it dangerous and which owner knows of, 95 C 251
joint adventure in use of automobile, 100 C 529
——requires common possession; common right of control, 100 C 529
——usually results where two or more hire automobile, 100 C 529
——not established by agreement to share expenses of one trip, 100 C 529
statutory liability for operation by bailee was only for violation of statutory rule of road, 102 C 66
where Legislature has expressed its judgment as to extent of owner's liability, courts may not extend it, 107 C 728
statute making owner of rented automobile liable for injury is reasonable exercise of police power, 108 C 333
automobile rental statute creates liability only for tortious operation; absolute liability would render statute unconstitutional, 108 C 333
one injured in Massachusetts by car rented in this State may maintain contract action here under our rental statute, 108 C 333
provision of insurance policy that it would not cover accident occurring while automobile being operated in violation of law as to age, construed, 108 C 598
automobile lease statute creates liability only for tortious operation; amendment limits liability to such as would have been incurred by the operator if he had also been the owner, 110 C 541
statute imposing liability on person renting or leasing automobile to another, construed and upheld, 113 C 237
——includes one who hires it or comes into possession under a hiring with express or implied authority of owner, 113 C 237
——but not one who wrongfully acquires possession from person who hired it, 113 C 237
automobile while capable of doing great damage, is not an intrinsically dangerous instrumentality to be classed with ferocious animals or high explosives, 116 C 515
——liability cannot be imposed upon an owner merely because he entrusts it to another to drive, 116 C 515
owner liable for injury resulting from operation of automobile he loans to another when he knows or ought to know that other to be so incompetent that he should reasonably anticipate injury to result, 116 C 515
——same principle as in case of one selling dangerous instrumentality to child, 116 C 515
——and repeal of statute on this subject not in derogation of adoption of common-law rule, 116 C 515
statute providing that unlicensed person may drive while under instruction by licensed operator who has full control of vehicle; *held* legislative affirmance that unlicensed person so operating not so incompetent that general safety requires he be kept off highway, 116 C 515
——and something more required to fix liability for resulting injury upon owner than that operator was unlicensed and inexperienced, 116 C 515
whether instructor of unlicensed operator was negligent in seizing wheel of no moment, because complaint contained no allegations supporting recovery against owner upon such grounds, 116 C 515
if owner of car, while he also occupies it, allows another to drive it, but himself retains control, he is liable for actual driver's negligence in the operation, 119 C 563
while there may be presumption that person behind wheel is controlling car, it is not conclusive, 119 C 563
from testimony that just before collision defendant seized wheel behind which girl was seated, from inference from failure of defendant to produce testimony on point, and from his conduct subsequent to accident, court justified in concluding he was the operator both at common law and under statute, 119 C 563
essentials of joint enterprise in use of automobile include common purpose, community of interest in them, joint possession and equal authority to control its operation, 123 C 49
——husband and wife riding in car owned and driven by one of them to carry out common purpose not engaged in joint enterprise in absence of evidence of right in both to control its operation, 123 C 49

§ 32. ——Family Car Doctrine
husband who uses car owned by wife is her continuous bailee, 93 C 431
"in performance of such owner's business" in the statute includes pleasure driving, 93 C 432

liability of principal and agent for negligence of latter in course of employment, 100 C 12
——family car driven by son, 100 C 12
aside from any statute owner of car is liable for negligence of member of family driving it where he maintains it for use of family, 100 C 170
family-car doctrine applies to vehicle used for business as well as pleasure, 102 C 66
basis of family-car doctrine, 102 C 67
——where defendant owned trucks used by her sons and brother-in-law to carry on contract to carry mail, all lived as a family and earnings went to its support, owner of car *held* liable, 102 C 67
——that at time of accident the driver was employed by L to carry mail under latter's contract no defense as driver might have been in position of independent contractors, 102 C 67
family-car doctrine explained, 105 C 431
——not supported where only evidence is denial of owner that car was family car, 105 C 429
——finding that son of owner was agent and bailee one of fact, 105 C 429
family-car doctrine reiterated, 106 C 294
——sister of owner residing with him who always got special permission to drive, *held* not to have requisite general authority, 106 C 294
——semble, a member of family, 106 C 294
family-car doctrine applies to all living collectively in owner's household for whom car is maintained and who have general authority to use it, 106 C 447
——not dependent on blood relationship, 106 C 447
theory underlying family-car doctrine, 106 C 447
under family-car doctrine driver must have had general authority to operate car, 107 C 728
——unwarranted extensions of doctrine not to be made, 107 C 730
elements going to establish liability under family-car doctrine, 109 C 417
error claimed because of submission to jury of family-car doctrine too late, when no objection made to evidence on trial, 109 C 417
evidence of circumstances, frequency, notoriety of operation to establish elements of family-car doctrine, 109 C 417
——direct evidence not necessary, 109 C 417
——if sufficient in scope, will meet requirements as against denials by owner, 109 C 417
——evidence *held* sufficient to prove that car was family car, son had authority to drive it, and was operating it under such authority and for purpose for which maintained, 109 C 417
son who had obtained special permission to use mother's car for his own purposes on present occasion and whose general use was restricted and at times refused *held* not to be within doctrine, 112 C 76
circumstantial evidence, as of conduct of parties tending to inference of use as family car, often only resort of plaintiff, 117 C 539
——is not to be disregarded and may be adequate to overcome direct testimony to contrary, 117 C 539
statute raising, from proof of relationship, presumption that automobile is family car does not affect substantive rights but governs detail of procedure, 117 C 539
——applies to all trials, whether or not cause of action accrued or suit was brought before taking effect of act, 117 C 539
where plaintiff's car was being operated by her husband as family car, she was responsible for any negligence on his part, 117 C 609
statute creates presumption that where driver is husband, wife, etc., of owner, car is family car, and burden is on defendant to rebut such presumption, 118 C 58
——intent was that presumption shall avail plaintiff until trier finds proven circumstances of situation with reference to use made of car and authority of person operating it to drive it, 118 C 58
——then burden is on plaintiff to establish in view of facts proven that car was being operated as family car, 118 C 58
——and where plaintiff offered no evidence except relationship of driver and owner and they testified it was not family car and driver not authorized to drive it, jury could disbelieve latter's testimony and find for plaintiff, 118 C 58
doctrine now firmly established, but finds its limitation in family relations, 120 C 465
——cases reviewed, 120 C 468, 469
——within relation are included all members of owner's household for whose convenience car is maintained and who have general authority to drive it, 120 C 469
——applies where member of family who is using car is carrying out very purpose for which owner maintained it, 120 C 469
——liability of Ford agency for accident of salesman not governed by family car doctrine, 120 C 465
relevancy of testimony that mother did not have license to drive in New York, where car belonged to son who lived with her in Greenwich, 126 C 623
where head of family maintains car for general use of household, person injured by negligence of one having general authority to use it and using it within scope of general purposes intended may recover from owner, 128 C 24

——basis of this liability; that car is at times used for business purposes, nil sig.; nor does liability depend on consanguinity, 128 C 25
——no valid distinction between situation where car owned by member of family and one where it is owned by family corporation for use of family of its managing head and principal stockholder, 128 C 25
——rule is in nature of exception to general principle denying recovery unless driver is pursuing agency or employment for owner, 128 C 29
in action by administratrix of father against son who was operating and daughter who owned family car, negligence of son would be imputed to father so as to bar recovery against daughter, 129 C 519

§ 33. Procedural Matters

§ 34. ——Pleading
necessity of alleging statute, and claiming double or treble damages, to get them, 84 C 47
complaint must state facts within statute and claim relief under it for treble damages, 93 C 249
complaint alleging careless and negligent operation at reckless speed sufficient, 93 C 302
complaint setting forth gross negligence in operating automobile at cross streets where trolley discharged passengers, sufficient for exemplary damages, 94 C 257, 303
incompetence or inexperience of driver of motor car insufficient to prove owner negligent, 96 C 663
——even if it is alleged that he was negligent in employing such a driver, 96 C 663
allegation that automobile was "operated by the defendants and by the defendants' agent" is a defective allegation of operation by an agent, 97 C 149
necessity and effect of specifying grounds of negligence, 99 C 1
——failure to obey headlight law may be taken advantage of under allegation of careless and reckless driving and failure to keep outlook, 99 C 1
pleading that automobile not operated lawfully at street intersection permits proof of violation of law of road, 100 C 551
concurring negligence of driver of automobile in which plaintiff is riding with that of driver of colliding car can be found though not specially alleged, 103 C 41
allegations of complaint *held* sufficient to raise issues of violation of statutory rules of road, 105 C 663
where several acts of negligence are pleaded proof of one or more justifies recovery, 105 C 669
allegations of negligence improper in action under guest statute, 109 C 517
complaint alleging operation wantonly, recklessly and negligently sufficient to support recovery for wanton misconduct, 110 C 108
allegations that defendant's failure to slow car upon seeing plaintiff in street and have it under proper control afford basis for verdict on ground of supervening negligence, 116 C 262
ordinarily only proper purpose of alleging that defendant is guilty of reckless misconduct is possibility of avoiding defense of contributory negligence, 116 C 471
——unless it can serve this purpose counsel owe duty not to assert it, 116 C 471
——its assertion subjects plaintiff to possible serious disadvantages by reason of implication of general verdict, 116 C 471
——and court may suggest to counsel that they withdraw the allegation, 116 C 471
whether instructor of unlicensed operator was negligent in seizing wheel of no moment, because complaint contained no allegations supporting recovery against owner upon such grounds, 116 C 515
action for negligence arising out of automobile accident determined as to substantive rights by law of State where it happened, 116 C 545
——but requirement as to specially pleading assumption of risk is determined by law of State where action brought, 116 C 545
defense that plaintiff assumed risk in entering automobile without facts supporting it, demurrable, 117 C 97
——refusal of court to allow amendment setting up such facts error, 117 C 97
——as well as refusal to allow filing of defense that plaintiff recklessly exposed herself to danger by entering car whose driver she knew to be incompetent, 117 C 97
——latter presents different legal situation from that of assumption of risk, 117 C 97
complaint alleging that defendant owner kept automobile for use and convenience of family and that it was being operated by son with her knowledge and consent, sufficient to apprise defendant of reliance on family-car doctrine, 117 C 539
allegation in complaint that plaintiff's injuries were due solely to defendant's negligence, did not add to plaintiff's burden of proof as to lack of contributory negligence, 117 C 607
allegation in complaint that car was not properly equipped, in absence of motion, sufficient to justify charge as to duty of defendant in operating car, knowing that brakes were not working properly, 118 C 568
sufficient to set forth in complaint particular conduct relied upon as negligent without

reference to the statutory provisions claimed to have been violated by such conduct, 119 C 310

proof that plaintiff was driving car instead of being passenger as alleged, not a material variance in action against driver of another vehicle, 120 C 141

amendment reciting statute requiring red light where load extends beyond stationary floor of truck was to make pleadings conform to proof, and permissible, 120 C 596

since each tort-feasor may be sued separately, no allegations required in complaint except such as properly set forth liability of defendant sued, 123 C 145

where complaint alleged that defendant was negligent in driving his car recklessly, it was one based on negligence, 123 C 205

——court did not need to charge as to issue of recklessness, 123 C 205

complaint alleging that death "was caused solely by the reckless, careless and negligent operation" of an automobile and assigning usual negligence specifications, does not state with desirable accuracy a cause for wanton misconduct, 127 C 79

particular manner in which plaintiff was sitting on truck when foot was injured by contact with door of coupe being opened not so essential that differences in proof constituted material departure, 129 C 30

——at most there was variance and, as no objection was taken to evidence, no ground for claiming error on appeal, 129 C 30

in suit by passenger of bus against bus company and owner of automobile which collided with it, cross-complaint by latter against bus company properly stricken out, 129 C 34

allegations of reckless misconduct *held* to be sufficient to justify court in submitting issue to jury in absence of objection until after verdict, 129 C 302

§ 35. ——Evidence

§ 35(1). In General; Sufficiency

killing of dog; what plaintiff must prove, 86 C 546

error to charge that one should show, by a fair preponderance of evidence, that he was not intoxicated, 93 C 99

it is for the jury to decide the speed of automobiles colliding at intersecting streets; also whether drivers exercised due care, 93 C 251

conclusions not disturbed if evidence is conflicting, 93 C 302

that plaintiff was in exercise of due care may be result of inferences and nature of accident and attending circumstances, 93 C 439

court took judicial notice of practice of owner to insure liability for accidents, 95 C 116

effect of failure to call witnesses that were known and available, 95 C 732

question for jury whether lights are within the law, whether failure to have correct light was proximate cause of accident, and, if one had correct light, whether he exercised due care, 96 C 1

proof of any one of three offenses in statutes against operating recklessly, at an improper speed, and so as to endanger life or property, justifies recovery, 102 C 42

plaintiff not bound to prove all grounds of negligence alleged, 105 C 689

failure to hear signal justifies conclusion that it was not given, 107 C 160

res ipsa loquitur doctrine as applied to wheel coming off truck, 107 C 201

——defendant *held* not to have sustained burden of proof as to preventing defective condition or remedying it, 107 C 201

whether situation requires more than ordinary care is question for jury unless exceptional facts make it one of law, 107 C 670

mere testimony that plaintiff saw no signal does not justify conclusion that none was given, 108 C 180

negligence and contributory negligence are questions of fact where plaintiff claimed to have been thrown from car by sudden start after stop to let her out, 108 C 628

whether certain speed constitutes negligence, question of fact for trial court, 108 C 704

plaintiff must establish logical basis for negligence he claims, 109 C 58

——but claim of five-year-old child for injury by automobile sustained though no evidence as to how accident happened, 109 C 58

whether operator of automobile equipped with legal headlights is negligent in not seeing pedestrian is for jury, 109 C 206

finding of speed of definite number of miles not justified by inference where no direct evidence, 110 C 273

conduct of driver in speeding away after killing pedestrian, not evidence of her want of contributory negligence, 112 C 86

——no presumption here arising out of instinct of self-preservation, 112 C 89

——if circumstances found as strongly point to want of as to exercise of due care, no recovery, 112 C 90

proof need not be by direct evidence; less evidence required where decedent is dead; rule de burden of proof should be suspended in such case (dissenting opinion), 112 C 90

skidding of car alone not sufficient to show that brakes not in good order, 112 C 687

where automobile struck pedestrian and there were no witnesses, inference based on testimony as to his position before accident

and a sketch by driver who struck him, *held* sufficient, 113 C 274
decedent killed by plaintiff's car; no evidence direct or circumstantial of due care and directed verdict for defendant sustained, 113 C 789
doctrine of res ipsa loquitur only applicable where accident ordinarily would not happen except by fault in operation, 114 C 473
——fact that front tire was blown out not sufficient basis, 114 C 473
——court considered well-known physical fact that blowing out of tire may cause accident, 114 C 473
physical facts *held* to show plaintiff's testimony concerning collision untrue, 114 C 647
testimony of defendant that he failed to apply brakes not conclusive where it was not proximate cause of accident, 115 C 201
nature and effect of judicial admission by defendant, 115 C 201
——is not conclusive where insurance company is real party in interest, 115 C 201
skidding of automobile does not necessarily establish negligence in its operation, 115 C 490
——whether or not negligent action of driver caused skidding ordinarily question of fact, 115 C 490
proof that boy was standing on running board of truck would not constitute fatal variance from allegation that he was riding in it, 115 C 503
there was no reasonable evidence that after pedestrian came into position of peril from defendant's automobile defendant had opportunity to avoid accident, 115 C 658
testimony of physician that disease from which intestate died was probably caused by accident was sufficient to remove case from realm of speculation and presented question of fact for jury, 115 C 693
automobile drove through insufficient fence resulting in death of driver and passenger; question of whether city had notice of defect should have been submitted to jury with proper instructions, 116 C 55
tire marks on highway become conclusively determinative between conflicting oral testimony as to circumstances of accident only where their existence and location are admitted or undisputed, 116 C 213
circumstantial evidence may show car was going at greater speed than direct testimony, 116 C 389
testimony supported inference that defendant at time of accident was driving car which collided with plaintiff, 116 C 661
that witness was mistaken as to exact place of accident does not necessarily render nugatory his other testimony, 116 C 717
jury might reasonably have inferred from nature of respective injuries and from fact that N was previously driving, that he was driver when collision occurred, 117 C 271
where person charged with negligence, as well as plaintiff's decedent, died as result of accident, 1931 statute did not apply and plaintiff had burden of proving contributory negligence, 117 C 271
where no direct testimony (both parties having been killed), situation can be removed from speculation only if facts and inferences are such that jury might find cause produced by negligence of driver to exclusion of other causes not involving such negligence, 117 C 274
family car; evidence; presumption, 117 C 539
where testimony as to tire marks on road is not clear they do not become indisputable physical facts, 118 C 124
position of cars after accident *held* insufficient to establish indisputable physical facts sufficient to overcome oral testimony, 118 C 387
position of cars after accident and of glass in road *held* insufficient for conclusion as to position of cars at time of accident, 118 C 468
incumbent on plaintiff in "guest" case to prove case by preponderance of evidence; if it was in equipoise he could not prevail, 118 C 628
no unfavorable inference from failure of defendants to testify de agency, plaintiff having failed to make out prima facie case, 118 C 651
within province of jury from evidence of plaintiff's position and actions immediately before accident to draw inferences as to them at the moment thereof; Kotler v. Lalley (112 C 86) distinguished, 119 C 175
whether conduct constitutes heedless and reckless disregard is question of fact for jury whose verdict on conflicting evidence will not be disturbed if reasonable, 119 C 237
——when defendant is guilty of no more than momentary thoughtlessness or inadvertence jury cannot reasonably find reckless disregard, 119 C 237, 238
——when conduct is persisted in despite warnings and knowledge of danger involved question is one of fact for jury, 119 C 238
registration of truck in defendant's name sufficient evidence of ownership in year it was so registered, 119 C 307
——and that conclusion further supported by appearance of defendant's trade name on it, 119 C 307
——but burden of proof on issue of whether truck was being operated by agent of owner within scope of employment on plaintiff, 119 C 307
——and mere proof of ownership not enough to show this prima facie, 119 C 307

——no distinction between commercial vehicles and those of pleasure type, 119 C 309
——no unfavorable inference to be drawn from defendant's failure to produce evidence peculiarly within his knowledge when plaintiff failed to make out prima facie case, 119 C 307
statute placing burden of proof of contributory negligence on defendant for negligently causing death or negligently injuring person who dies before trial, does not apply to actions against municipalities for injuries from failure to erect sufficient railing or because of defective road or bridge, 119 C 476
where issue was whether defendant was controlling operation of car at time of accident, his failure to testify or produce other persons in car justifies inference against him, 119 C 563
conduct of defendant after accident as admission that he was in control of car, 119 C 568
where testimony in behalf of plaintiff stated unreasonable distance that defendant's car was away, court entitled to consider testimony with other factors in establishing distance and to conclude that it was not as great as that testified to, 119 C 654
where, because of death of pedestrian, burden to plead and prove contributory negligence is on defendant, and there were no witnesses as to her conduct before accident, verdict sustained unless upon facts it is a necessary conclusion that plaintiff was negligent, 119 C 700
admission to doctor by defendant that she was driving recklessly admissible as admission that her conduct was reckless as word is used in common parlance, not in guest statute, 120 C 523
jury may properly consider that absolute accuracy of statement as to distances cannot be expected of persons concerned in automobile accident, 120 C 683, 121 C 126
vague estimate of defendant as to how far away bus was when he got clear view of it as he came around turn could not limit visibility to less than shown on own map, 121 C 432
jury's conclusion that defendant C was driving the automobile which injured plaintiff, and not defendant K, sustained, 121 C 545
guest statute; "look out; you are a bit over to your left"; exclamation of little weight in characterizing conduct, 121 C 701
characterization by passenger in bus that it stopped "very suddenly" would not suffice as description of act of negligence, 122 C 300
——but testimony that she was thrown "headlong" from seat to floor may be considered as physical fact tending to show negligence indirectly, 122 C 300
jury could not infer negligence from sudden stop of bus where there was evidence that it was caused by necessity of avoiding collision, 122 C 300
——burden on plaintiff to prove that bus driver did not act with due care, 122 C 300
experience as elevator operator sufficient to qualify witness to testify that bus step was not safe, 122 C 376
court warranted in inferring that traffic light had been installed and was being maintained by traffic authority of Hartford, 122 C 514
absolute accuracy of statement as to distance and time factors not to be expected, 122 C 668
length and character of brake marks justified inference that driver applied brakes as hard and as soon as could reasonably be expected, 123 C 590
evidence obviated any basis for criticism of physical impossibility of alleged occurrences which led up to collision with tree, 123 C 606
limits within and purposes for which evidence of failure of bus driver to return to wrecked car with which bus collided, could be considered, 123 C 610
proof by plaintiff that defendant's truck was stationary was necessary condition of recovery under complaint as interpreted and court was right in so informing jury, 124 C 14
marks appearing on photograph supported by direct evidence apart from them as to location of collision, 124 C 227
remark of court as to confidence it had in photographer where accuracy of pictures was attacked, did not prevent offer of testimony by plaintiff nor constitute error, 124 C 227
presumption of agency of operator and burden of proof on owner to rebut it, 126 C 584
testimony that car was coming "fast" or "very fast" of little weight as indicating any definite speed, 126 C 618
testimony that automobile was going fast means little, 127 C 84
allegations of complaint, in absence of supporting evidence by plaintiff, not effective to render it incumbent on defendant to go into issue of signal to turn, 127 C 284
——no inference from silence, since burden of proof on plaintiff, 127 C 288
course and distance traveled by car does not as matter of law outweigh definite estimate of speed by driver in connection with evidence as to speed of car he was following, 128 C 271
attempt to fix time and distance by mathematical calculation, unsatisfactory, 128 C 335
where driver did not see decedent until after she was struck and there were no eyewitnesses, Supreme Court could not hold as

matter of law that driver was negligent, 128 C 455

jury justified in rejecting testimony of defendants' witnesses in death case and drawing inference, based on physical facts, that at time of collision defendants' car was left of center of highway, 129 C 378

§ 35(2). Admissibility

who can testify as to speed, 83 C 174

how far reputation of driver for care is available in criminal case, 83 C 437

removal of a pile of dirt, after the accident, may be considered as affecting credibility of witnesses, 96 C 1

fact that superintendent said he knew driver was not just what he ought to be, inadmissible, 96 C 494

hypothetical question to expert driver not good if it seeks to give conclusion of the driver, 96 C 494

competence or incompetence, experience or inexperience of driver, of no importance on issue of negligence, 96 C 663

evidence of insufficient headlights admitted under charge of careless and reckless driving, 99 C 8

in automobile case glare of approaching headlights and effect on driver relevant on issue of negligence, 99 C 475

in suit by passenger in automobile evidence as to remarks of other passengers as to way car was going admissible, 99 C 573

caution addressed by occupant of car to driver as to manner of its operation is admissible in action by another occupant, as bearing upon driver's negligence and also upon issue of duty to caution him on part of plaintiff, 100 C 602

under allegation that defendant did not have car under control proof that he was negligent in going down a very slippery hill at all is admissible, 105 C 664

——so under allegation of illegal operation upon left side of road proof is admissible of breach of statutory duty to keep to right in passing, 105 C 664

general allegation of negligent operation, in absence of motion for more specific statement, admits proof of any facts within its purview, 105 C 690

——as excessive speed or failure to keep proper outlook, 105 C 690

nature of damage to automobile as showing how collision occurred, 107 C 17, 670

in action by wife against husband for negligent operation of automobile, their community of interest merely affects credibility, 107 C 86

extensive damage to one car as evidence of other's speed, 107 C 160

——failure to charge that purchaser was entitled to assume proper construction nil sig., 107 C 201

report of accident to motor vehicle commissioner by authorized agent is declaration within scope of agency and admissible against owner, 107 C 670

——not admissible within exception relating to statements by public officials in public records; that exception defined, 107 C 670

admissibility of suits by defendant and others against plaintiff, arising out of same accident, and their settlement, 107 C 670

where evidence as to position of cars was admitted on assurance that later evidence would show that it had not been moved and this was not offered, motion to strike out should be granted, 108 C 191

mechanic may testify as to point of impact of automobiles, 109 C 616

——that later collision with fence rendered this difficult, would go only to weight of testimony, 109 C 616

plea of guilty to information charging reckless driving and other offenses in alternative is not admissible as admission by driver in action under guest statute, 111 C 209

report of accident to motor vehicle commissioner not admissible as a report required by law, 111 C 411

operator of car has implied authority from owner to make report of automobile accident, 112 C 421

report of accident to commissioner is admission against driver of car, 112 C 421

——but to secure review of ruling excluding it, report must be marked for identification, 112 C 421

that plaintiff was not licensed to drive automobile not relevant to his negligence, 112 C 670

where claim is for permanent injury, mortality tables admissible to show probable duration of life, 114 C 64

——but they are not necessary or only evidence on issue, 114 C 64

failure to have automobile license, inexperience and immaturity as bearing on negligence, 114 C 336

judgment of a town court showing defendant charged with violation of rules of the road and pleaded guilty not admissible because it could not be determined what particular rule was involved, 114 C 383

mechanical defects in car known to defendant relevant to issue of heedless and reckless conduct as well as of ordinary negligence, 114 C 668

use of manual by witness in arriving at opinion of value of car upheld where he had sufficient experience to enable him to coordinate and evaluate information in it, 114 C 719

——where automobile had not been used, evidence admissible though witness had never seen it, 114 C 719
care exercised by other drivers of automobiles at scene not evidence on issue of negligence of defendant, 114 C 729
in absence of evidence that driver was agent of owner, formal statement to motor vehicle commissioner not admissible against latter, 115 C 384
report of automobile accident to motor vehicle commissioner made by defendant is admissible in evidence, 115 C 508
exclusion of plaintiff's accident report on ground that it contained nothing not already testified to by him, *held* not harmful, 117 C 549
evidence of witness as to nature of load upon truck not based on own knowledge should have been stricken out as hearsay, 119 C 309
where owner of car is riding with one to whom he has loaned its use, fact that owner was asleep negatives actual control of car by him, 120 C 647
where issue was whether driver of car was engaged on business of defendant, his checking words in report to motor vehicle commissioner "employee of owner" not contradictory to driver's testimony that he was not engaged in defendant's business at time of accident, 121 C 316
evidence that driver of car was drinking with plaintiffs *held* properly admitted upon issue of driver's being engaged in employment of defendant, 121 C 316
certified copy of record of court that defendant pleaded guilty to charge of "violation of rules of road, failure to give right of way," inadmissible to contradict her testimony that collision occurred on her right side of road, 123 C 127
estimate of speed by witness; objection went to weight not admissibility, 125 C 368
expert opinion as to number of miles automobile tires had run could have been excluded, weak as it was in its nature and where there was abundant evidence that they were smooth, 126 C 620

§ 36. ——Damages

treble damages, when recoverable; must appear in complaint, 84 C 47, 87 C 253, 93 C 247
treble damages for violation of law of the road allowed only when that is the sole cause of the injury, 93 C 247
——special verdict on interrogatories should be requested, if there are other causes of injury, 93 C 247
damages allowed for depreciation and loss of use, either for pleasure or business, 88 C 590, 94 C 481
damages usually difference in value of automobile before and after accident, 89 C 326, 93 C 454
cost of repairs as measure of damages, 93 C 454, 94 C 481
one deprived wrongfully of truck, need not hire others to lessen damages, 94 C 481
damages for injury not amounting to total loss, 96 C 337
——loss of use, 96 C 337
damages for injury to, may exceed value, if cost of repairs and loss of use recoverable, 98 C 248
——difference in value before and after is recoverable, 98 C 248
——costs of repairs ordinarily measures this, 98 C 248
damages for loss of use; proving rental value inclusive of wages of driver, gas and depreciation insufficient, if these be not separately shown, 98 C 609
interest on cost of restoration properly allowed in fixing damages for injury to automobile, 99 C 447
damages for conversion of automobile, 99 C 524
where automobile injured, measure of damages is difference in value before and after collision; repair bill as evidence of it, 106 C 254
competent evidence of damages for conversion of car, 107 C 366
——expert may give opinion of value though he has never seen particular car, 107 C 366
measure of damages for misrepresenting year of manufacture is difference in value, 108 C 511
——sufficiently shown by difference in depreciation in value of trucks of years in question, 108 C 511
loss of use of automobile; damages how proved, 108 C 524, 109 C 376
elements involved in damage for loss of use considered, 108 C 738
——evidence *held* to show allowance made for depreciation, 108 C 738
damages for conversion of automobile in general, 109 C 117
——when plaintiff is holding car under conditional bill of sale, 109 C 117
elements of loss of use of truck and necessary deductions, 109 C 376
cases as to elements to show damage for loss of use listed, 109 C 731
where defendant's negligence alone caused collision, but damage was due to plaintiff's unreasonable speed, *held* that defendant was liable for full amount of damages, 110 C 184
statement that plaintiff spent "possibly around one hundred and sixty or one hundred and seventy dollars" for repairs too loose to justify award, 112 C 646

in determining damages for loss of use, services of driver not considered where it was not element in the case, 114 C 78

that results were not such as would have been reasonably anticipated by drivers of cars colliding not basis for denying liability, 115 C 650

——injuries to and miscarriage by woman frightened when two automobiles collided in street near her, 115 C 650

where guest sues driver of car in which he was riding and driver of another car colliding with it, liabilities are severable, 116 C 575

——each defendant responsible for entire damage if his negligence was proximate cause of accident, 116 C 575

injury to automobile; general rule is difference in value before and after accident; repairs may be evidence of it; charge disregarding evidence of them error, 119 C 262

loss of use of automobile; when another car is hired, amount actually expended is measure of recovery, 125 C 386

double or treble damages given for violation of rules of road is in its nature punishment for committing wrong of a public nature, 127 C 533

§ 37. ——Actions; Miscellaneous

Massachusetts statute de death by wrongful act not enforceable here, 87 C 461

supervening negligence of trolley crew may fix liability on them, 94 C 201

A and B collide, and B's car thrown against C; under general verdict for C injury due to concurrent negligence of A and B, 95 C 732

joint negligence of drivers of two automobiles which collide, in action by bystanders; negligence of one not defense to other, 97 C 155

where automobile is not restored on demand by bailee action lies for conversion, 99 C 524

——so, if when offered back it is so injured as to be useless and not reasonably repairable, 99 C 524

——if it can be repaired, recovery is for injuries to it, 99 C 524

——both claims may be made in one suit, 99 C 524

where complaint charges negligence in failure to use due care and to observe headlight law, if no error as to either, general verdict stands, 100 C 199

where there is both complaint and cross-complaint, verdict against both parties may stand, either because collision was an accident or both were negligent, 100 C 579

concurring negligence of driver of car in which plaintiff is riding and driver of car with which it collided; as each driver is tort-feasor he can be sued separately, 103 C 46

statute de service on nonresident driver of motor vehicle by leaving process with commissioner and sending copy to defendant *held* effective to confer jurisdiction, 113 C 74, 756

——reasonable probability of actual notice and reasonable opportunity to appear and defend, 113 C 74

——statute de continuances applicable; mailing of copy must be forthwith; meaning of "last-known address," 113 C 74

rights arising out of accident in another State determined by its law, 113 C 302

rights of persons injured in one accident to recover from insurer under statute, where amount of judgments recovered exceeds face of policy, 115 C 193

conclusion in Hartley v. Vitiello (113 C 74) that statute de service on nonresident driver by leaving process with commissioner and sending copy to defendant was effective to confer jurisdiction, affirmed, 116 C 48

where pedestrian is struck by automobile and thrown under trolley, owner of each is responsible for injuries done by it, 116 C 292

service upon defendant nonresident made upon motor vehicle commissioner December 24, 1931; accident happened November 3, 1930; *held* same application of Statute of Limitations as in cases where personal service is had, 116 C 643

——and statute de exclusion of time of absence from State does not apply; action barred in one year, 116 C 643

purpose of statute de service on motor vehicle commissioner was to afford means by which equivalent of personal service might be made against nonresidents, 116 C 643

there being no provision in statutes de service on motor vehicle commissioner for continuances, that subject is controlled by existing statutes, 116 C 643

statute raising, from proof of relationship, presumption that automobile is family car does not affect substantive rights but governs detail of procedure, 117 C 539

——applies to all trials, whether or not cause of action accrued or suit was brought before taking effect of act, 117 C 539

plaintiff nonresident brought action against defendant nonresident for automobile accident in this State, serving motor vehicle commissioner and defendant contested case on merits; *held*

——plaintiff by bringing suit here brought subject matter within jurisdiction, in which case our courts not averse to taking jurisdiction, 117 C 683

——nothing in terms of statute de service on motor vehicle commissioner making it inapplicable to nonresidents, 117 C 683

——and by his general appearance defendant submitted himself to jurisdiction, 117 C 683

——if any defect in bringing suit in Hartford it went to venue not jurisdiction, 117 C 683

where no claim that damages were excessive and there was evidence that plaintiff was injured, court did not err in refusing to set aside verdict on ground that plaintiff was not hurt, 117 C 685

where two cases growing out of automobile collision were tried together and in one plaintiff was two years old, verdict for defendant in both implied lack of negligence on defendant's part and error as to charge on contributory negligence harmless, 118 C 154

where complaint relied on ordinary negligence and supervening negligence and verdict was general, error in submitting former issue to jury proper ground to set verdict aside, 120 C 412

where case was submitted on two grounds, negligence and wanton misconduct, and interrogatories showed jury found for plaintiff on both and that he was not contributorily negligent, errors assigned with reference to wanton misconduct will not be considered, 120 C 445

whether failure of pedestrian, who looked up and down street as he left curb, to look again while crossing street was negligence, question of fact not law, 124 C 482

where plaintiff injured while riding as guest before repeal of guest statute but action not brought until after its repeal, no right of action for negligence, 125 C 145

AUTREFOIS ACQUIT AND CONVICT

See Criminal Law and Procedure; Andrews and Fowler, Maltbie and Townshend Digests

AWARD

See Arbitration and Award; Workmen's Compensation

BAIL

§ 1. In General
2. Rights and Liabilities of Surety

See also Bonds

§ 1. In General

special bail taken to party to be benefited. K 12

surrender of principal by bail provable only by record, K 18, 268, 434

——cannot be pleaded as matter in pais, K 18

sheriff cannot become bail for person arrested by him, K 211

bail not allowed to accused under sentence for prior offense, K 260

officer not liable for escape when taking sufficient bail which afterwards fails, 1 R 54

motion for special bail when made too late, 2 R 101

sheriff may take bail and release prisoner, in criminal case, 2 D 11

practice and procedure de bail, 2 D 199

return of execution unsatisfied before return day only prima facie evidence of avoidance, 3 C 318

principal is in the custody of the bail, who may actually confine him, 3 C 421

exoneretur entered on motion, when, 3 C 422

when it is the duty of sheriff to assign bail-bond, 8 C 388

——not liable for not assigning, if bail be discharged by fault of creditor, 8 C 388

——or for fraudulent refusal by creditor to receive principal, 8 C 388

no recovery against surety unless avoidance by principal and return non est inventus, 11 C 106, 27 C 495

diligence required to justify return non est inventus, 11 C 108

——not excused by promise of surety, 11 C 110

avoidance not inferred from one failure to find principal; that is, during life of execution, 11 C 109
party who fraudulently conveys property after contracting debt may be held to bail, 19 C 540
party illegally required to give bail released on motion, 19 C 545
judgment against both husband and wife renders both liable to be taken on execution, 27 C 494
body of wife taken on execution relieved only in usual way, 27 C 495
due diligence in arresting body and making return is question of fact, 27 C 495
bail in criminal cases under statute, 61 C 499
special bail liable for ultimate judgment on an appeal from justice, 63 C 370
bail where State appeals in criminal prosecution, 65 C 282, 71 C 458
of bail in general, 71 C 461
special bail before pleading in a civil action, 74 C 204
pending habeas corpus; discretion of court, 78 C 150
oral request to indemnify surety on bail bond by principal not within Statute of Frauds, 83 C 686
——demand on co-obligor and notice thereof not a prerequisite to bringing action, 83 C 686
granting and fixing bail is a judicial or quasi-judicial act, 89 C 298
subordinate police official may accept, not fix, bail, 89 C 299
cash bail not ordinarily subject to foreign attachment, 96 C 356
——but may be in case of delay in owner's resuming possession after prosecution is ended, 96 C 356
——under statute, clerk is custodian, though special law provides that prosecutor may take it, 96 C 359
——duty of clerk where money not turned over to clerk, 96 C 359
——failure to turn it over does not vitiate bail, 96 C 359
constitutional provision forbidding detention not warranted by law applies in civil as well as criminal matters, 99 C 71
——and since Juvenile Court Act does not provide for bail during pendency of appeal, child could not be held, 99 C 71
power of Courts of Common Pleas and Superior Courts to admit to bail pending appeals to them, 99 C 92
where habeas corpus is pending person whose liberty is in issue may be committed to probation officer, 99 C 92
trial courts have discretionary power to admit prisoner under extradition to bail pending appeal from dismissal of habeas corpus; ruling will not be reversed unless discretion abused, 100 C 296
right of court generally to suspend execution of sentence and admit to bail after conviction, 100 C 297
accused at large under bail bond in constructive custody of law; coming into State to answer charge, is not immune from civil process, 102 C 12
when information adjudged insufficient, accused may be held on same bail pending arraignment on fresh charge, 106 C 114
when State appeals, accused must be admitted to bail, 106 C 114
Supreme Court without authority to grant application for bail which is not appeal from ruling of court, 109 C 738
K arrested by city charged with idleness and cash bail deposited; later charged with felonies but not presented, and bond forfeited for not appearing on idleness charge; *held* city treasurer entitled to money, not state's attorney, 119 C 22
evidence *held* not to support judgment awarding two-fifths of bail to L on ground that this amount of bond was money swindled from him by K, 119 C 22
——nor was there legal title to specific fund in L which would prevail over city's right to retain money, 119 C 22
——nor an equitable right to its return, which would depend on notice to the city of the transaction, 119 C 22
fixing of, is distinctive function of court, 126 C 427

§ 2. Rights and Liabilities of Surety

bail cannot object to early return of execution, unless damnified, K 384, 27 C 496
bail exonerated by judgment for defendant and principal, though afterwards reversed, 1 R 102, 469
bail may be relieved by audita querela from judgment for escape, when, 1 R 151
bail is liable to officer for fees, after discharge of judgment by creditor, 1 R 255
sheriff's bail discharged if principal be taken on execution, 1 R 374
right of bail to arrest principal is exercisable anywhere, 3 D 485
——bail liable for false imprisonment in using unnecessary force, 3 D 489
right of sheriff to subject bail by early return of execution, 4 D 5
bail may take principal when he pleases, personally or by agent, 3 C 85
rights of bail as to principal not affected by irregularity in issuing ca. sa., 3 C 86
bail not discharged by death of plaintiff after execution issued, nor by parol declaration of plaintiff's attorney that he is discharged, 3 C 86
bail not liable without due diligence in officer to arrest principal, 3 C 318, 8 C 389

obligation of bail arises from law and contract jointly, 3 C 318, 27 C 495
principal is in custody of bail, who may actually confine him, 3 C 421
bail discharged by arrest and commitment under act of 1818, 3 C 421
bail not required to give notice before breaking in to arrest principal, when; liable only for actual damage for trespass in arresting principal, 4 C 170
extent of bail's liability to sheriff, 5 C 591
bail discharged by conduct of creditor, when, 8 C 386
no part of contract of bail that debtor shall be found wherever sought, 11 C 109
duty of bail on debtor's return within life of execution, 27 C 497
rule of damages in recovery against bail, 27 C 498
a return of execution too early does not exonerate bail unless he is actually prejudiced, 55 C 157
voluntary bail cannot attack bail's legality, 89 C 299
rights of surety on bail bond, 102 C 12
acquittal and discharge of accused discharges bail, 106 C 114
accused arrested and charged with robbery, released on bail and arrested for independent offense, and both cases continued; *held* sureties on bond not released, 118 C 645
sureties in bail bond are released from fulfilling requirements of bond if they are prevented by an act of God, the law or by the act of the obligee, 118 C 649

BAILMENTS

§ 1. In General
2. Rights, Duties and Liabilities
3. ——Of Bailee
4. ——Of Bailor
5. Pleading, Evidence and Damages

See also Carriers; Contracts; Innkeepers; Pledge

§ 1. In General

a special deposit of money for keeping becomes debt only after demand, 18 C 188
bailment of personal property is valid consideration for promise to return it, 24 C 484
a delivery of goods to legatee by executor on promise to return, if needed for debts, is a bailment, not a sale, 39 C 74
bills given for bank check; failure of bank; transaction *held* no bailment, 41 C 346
contract for lease of mill and sale of grain *held* to constitute bailment, not sale, 70 C 738
delivery of goods for sale, though no selling price fixed, *held* bailment; consignee's creditors cannot attach, 71 C 158
nature of consignment of goods for sale; sale of entire stock in consignee's store; rights of parties, 72 C 504
delivery of goods for thirty days' trial, to be paid for unless notice of rejection given, is a bailment, 75 C 469
contract of bailment may include option to purchase, 79 C 419
placing bonds in bank vault *held* not to constitute bank a bailee, 80 C 92
when common carrier is vendee's bailee, 86 C 494
unauthorized sale of goods on consignment confers no title, 90 C 487
ownership of bailor and bailee, 92 C 254
property in trust to be restored on its termination is a bailment, 92 C 702
no bailment if motorcycle is left on highway with A's knowledge unless he assumes custody of it, 92 C 702
wife who lets husband use automobile creates continuous bailment; liability for his negligence, 93 C 431
where A buys and receives goods personally in pursuance of joint enterprise, he is bailee of share of associate, 93 C 576
manager of gasoline station bound to use reasonable care to prevent loss, not highest degree of care, 101 C 238
——his position not that of bailee, because of master's possession and control, 101 C 238
——burden not upon him to explain loss and shortage, 101 C 238
shipment of shoes *held* on consignment only; not absolute sale, 102 C 38
consignee cannot pass title where consignor's approval of sale is made a condition of consignment contract, 102 C 38
bailment involves delivery into possession of bailee under agreement to return, 104 C 222
agreement to pay for rent of derrick construed and *held* not to be a bailment, 104 C 222
attempted consignment of cars *held* a subterfuge and to have been a sale, and the cars subject to attachment, 112 C 370
possession of goods by person to whom sent not necessarily inconsistent with consign-

ment; misleading acts by person sending goods, 112 C 370
where intention is that title to deposit shall not pass to bank it is a special deposit and relationship is that of bailor and bailee, 115 C 1
relationship between vendor and vendee under conditional bill of sale of automobile gives rise to bailment, 115 C 187
C Company paid distributor S Company for cars delivered to dealer G Company and took receipt; G Company executed and recorded "trust receipt" for them as agent of C Company, agreeing to hold them in trust for latter and if it sold them for cash to turn proceeds over to latter; *held* that title passed to C Company and never was in G Company, 116 C 487
——that there was no retention of possession of previously owned property by G Company with resulting deception of creditors as in case of chattel mortgage, 116 C 487
——that if transaction was conditional sale, contract was acknowledged and recorded in compliance with statute, 116 C 487
——that if it was consignment, transaction was bailment and cars not subject to attachment by creditors of bailee, 116 C 487
——that in either case title of C Company was superior to that of receiver of G Company, 116 C 487
when relation of bank with depositor of checks or drafts for collection is that of debtor and creditor as distinguished from bailor and bailee or principal and agent for collection, 117 C 407 and see BANKS and BANKING
buyer who claims rescission of sale because of defective goods becomes bailee of articles after seller's refusal to accept their return, 121 C 651
——if buyer uses equipment or part of it he ceases to become bailee and cannot claim rescission, 121 C 651

§ 2. Rights, Duties and Liabilities

§ 3. ——Of Bailee

bailee delivering goods on forged order is liable to bailor for value, 1 R 221
bailee of stolen money if unaware of theft not guilty of tortious conversion on redelivery to bailor, 38 C 532
a defendant compelled to keep animals by plaintiff's acts is entitled to a lien, 39 C 53
bailee liable for death of horse injured during bailment, 40 C 111
keeper of livery stable *held* liable only for ordinary care in storage of hearse, 61 C 494
——not negligence to remove hearse to another barn, although owner's insurance was thereby vacated, unless livery stable keeper had knowledge of the insurance, 61 C 496
——duty of owner to have informed keeper of this insurance, 61 C 497
liability of voluntary depository, 67 C 427, 92 C 702
——as where workman leaves tools on employer's premises, 81 C 406
right of bailee to sue for conversion of goods; disposition of money recovered, 69 C 370
duty of bailee for hire, 73 C 355
care required of warehouseman where poultry are left for cold storage, 73 C 355
care required of liveryman, 77 C 692
care required of warehouseman in general; estoppel by receipt; effect of admitting in pleadings receipt of goods; evidence as to care taken by others not admissible, 79 C 342
liability of one hiring team, or receiving it with knowledge, for injury done in driving it to another destination than that agreed on at time of hiring, 80 C 353
——right of one who thus deviates to recover for negligence of one who lends vehicle, 80 C 553
expenses of reasonable steps by bailee to preserve goods are recoverable, 93 C 576
in bailment for repairs, bailee may employ competent third person, 94 C 520
duty of bailee to deliver property when demanded; must be identical article, 99 C 527
bailee not entitled to lien on repaired article unless work done with express or implied consent of owner, 102 C 652
——consent may be implied from all circumstances, including relation of parties, 102 C 652
bailee's lien for repairs on automobile superior to conditional vendor's right to retake possession, 102 C 652
delivery of fur coat for repairs; implied obligations of bailee, 103 C 685
bailee for repairs under no duty to deliver article to home or office of bailor in absence of contract or custom, 104 C 467
duty of bailee to deliver article to one having rights superior to those of bailor; reasonable time for investigation, 107 C 574
attorney to whom note is sent by holder of it as collateral security for purposes of certain trial as bailee, 107 C 574
——whether conversion where he delivers it to payee with acquiescence of attorney for holder depends on latter's authority to consent, 107 C 574
——but if payee later again delivers it to his attorney and holder demands it, situation is different, 107 C 574
——as attorney was in privity with general owner, only liable to holder for amount of debt incurred, 107 C 574
bailee is liable for injury to property during unauthorized use by himself or another

with his consent, though it is by accident, 109 C 365
——this obligation is contractual in its nature and while he may delegate performance of duty, he is liable for its breach, 109 C 365
——employee taking automobile from garage without consent of employer and injuring it by accident, 109 C 365
——question is one of liability of master for wrong of servant, 109 C 365
duty of garageman safely to keep car left with him for storage, 109 C 367
where work and labor are to be performed by bailee on goods delivered by bailor he is obligated to exercise ordinary care, 113 C 97
——and this obligation extends to packing them for shipment, 113 C 97
acknowledgment of receipt from bailee of goods in good condition does not shift to carrier responsibility resulting from improper packing, 113 C 97
agreement whereby defendant bought chickens and plaintiff raised them to broilers for sale by defendant was bailment; plaintiff not liable for chickens destroyed by hurricane, 126 C 707
——method of determining rights of parties under agreements, 126 C 707
no actionable breach of contract of bailment by country club where its night watchman got car of patron from parking place for tip, and in so doing injured it, 127 C 493
basis of bailee's right to recover from third person for conversion of bailed property is right of possession and special property in goods, rather than express or implied consent of owner, 129 C 386
where third party wrongfully took goods being shipped by common carrier, pendency of suit by owner against carrier did not preclude recovery of full value of goods in action of conversion by carrier against third party, 129 C 386

§ 4. ——Of Bailor

tortious sale by bailee; bailor may affirm the sale and recover the price, 23 C 166
duty of bailor to inform bailee of conditions vacating insurance on hearse, 61 C 497
negligence of bailee of article for hire not imputed to bailor in action by latter against third party for its destruction, 81 C 384
bailor who knows of suit against bailee for automobile should become a party, 91 C 316
judgment in replevin against bailee estops bailor, when, 91 C 316
wife who lets husband use automobile creates continuous bailment and is responsible for his negligence, 93 C 431
owner of truck only responsible to disclose to gratuitous bailee thereof defects he knows of that make it dangerous, 95 C 251
one invited by a gratuitous bailee to ride on truck stands in same position as borrower against bailor, 95 C 251
where automobile is so far injured that it is useless and incapable of repairs, action lies for its conversion, 99 C 523
——if it may be reasonably repaired, owner should accept it and sue for injury, 99 C 523
——which is true situation is question for jury, 99 C 523
statutory liability of owner for operation of automobile by bailee was only for violation of statutory rule of the road, 102 C 66
where article is bailed for repairs and vendee under conditional sale defaults in payment vendor must pay for repairs before recovering it, 102 C 652
delivery of fur coat for repairs; rights and remedies of bailor, 103 C 685
employee of garage undertaking, without authority, to deliver car to owner at latter's request, *held* agent of owner, not of employer; owner liable to third party, 104 C 467
right of bailor to opportunity to investigate where third party claims article under superior title, 107 C 574
owner of car *held* not bound by limitations upon liability printed on receipt casually handed to him at garage, 109 C 365
if work on article bailed is not properly done, bailor may sue on contract, or if value of article is destroyed, in tort, to recover that value, 113 C 99

§ 5. Pleading, Evidence and Damages

rule of damages in action by bailee against general owner or against stranger, 15 C 303
value of property at time of conversion is ordinarily the rule of damages, 23 C 528
burden of proof where goods are lost, 37 C 277
presumption of negligence where bailee fails to restore article in proper condition on demand, 99 C 527
——damages for failure to restore article in usable condition, 99 C 528
——where restored in damaged condition, 99 C 529
joinder of causes of action against bailee for conversion and for negligent injury to the property, 99 C 529
rule that bailee must disprove negligence rests upon his exclusive possession, 101 C 238
measure of damages for breach of contract to repair, 103 C 685
——test of bailee's performance is value of coat to bailor for personal use, not value for any other purpose, 103 C 685

damages for conversion of article or loss by negligence fixed by contract, if any, otherwise by market value, 107 C 99

damages for conversion or loss by negligence of article bailed is value at time of conversion or loss, with interest; value fixed by contract, if any, if not by market value, 107 C 712

——agreement of consignee of goods for sale to pay consignor certain sum for any article not accounted for, 107 C 712

bailment for hire; presumption of negligence on nonproduction of goods, 108 C 659

damages where liquor was first stored privately by attaching officer and then placed in warehouse without gauging and there was decrease in quantity, 108 C 659

——that two locks on door, key of one of which plaintiff held, did not change rule as to presumption of negligence for nondelivery, 108 C 659

——court could not take judicial notice of decrease of liquor by evaporation and soaking, 108 C 659

bailor must prove, by definite evidence beyond mere surmise and conjecture, quantity, quality and value of goods not produced, 108 C 659

——where receipt did not state quantity or value of goods, plaintiff had to prove them, 108 C 659

loss by bailee of fifty-nine barrels of liquors; bailor entitled to wholesale price of same kind of liquor, not retail price of liquor sold in pints, 108 C 659

value of advertising material destroyed in shipping, how determined, 113 C 99

presumption of negligence makes out prima facie case which may be overcome by bailee satisfying trial court that loss was not due to negligence in custody of goods, 118 C 63

BANK NIGHT

See Gaming

BANKRUPTCY

§ 1. In General; Effect of
2. Rights and Duties of Trustee in Bankruptcy
3. Preferences; Fraudulent Transfers; Liens
4. Claims
5. Discharge of Bankrupt

See also Fraudulent Conveyances; Receivers

§ 1. In General; Effect of

mere power of Congress to pass laws of bankruptcy, if unexercised, does not affect insolvent laws, 2 R 180

under act of 1800, validity of commission in bankruptcy not impeachable in state courts, 2 D 96, 4 D 79

——either by one sued as debtor or as tortfeasor, 2 D 96

declaration and adjudication of commissioners in bankruptcy may be read in evidence though lacking what certainty, 2 D 246

specific act of bankruptcy and its date may be shown by parol, when, 2 D 246

statute de fraudulent conveyance not a bankrupt or insolvent law; not inoperative because of United States bankrupt law, 17 C 331

insolvency proceedings in cases within view of bankruptcy act valid, 34 C 551

voluntary assignment in insolvency is prima facie an act of bankruptcy, 38 C 84

——assignment is valid if no proceedings in bankruptcy are begun in time, 38 C 84, 43 C 299

United States bankruptcy law does not prevent bankrupt from voting on stock standing in his name, 42 C 569

an act of bankruptcy is required to bring case within the law of bankruptcy, 43 C 298

insolvency proceedings are only contingently affected by bankruptcy law, 43 C 299

——may be invalid, if prejudicial to debtor, 43 C 301

"mutual credits" defined, and applied to what classes of cases, 43 C 577

U. S. District Court has power to marshal assets only so far as law establishes rights and priorities, 44 C 594

of one joint debtor; its effect on averments in action against the other, 48 C 41

judgment against bankrupt pending proceedings in bankruptcy, 49 C 46

——United States bankruptcy law does not require stay of suit except on application of bankrupt, 49 C 47

——no presumption that proceedings in bankruptcy were pending at time of judgment, 49 C 47

presumption of continuance of bankruptcy

from proof of it five months previous is very slight, 49 C 467
——sufficient if there be no evidence at all to the contrary, 49 C 467
effect of federal law on state insolvency law and assignments thereunder, 72 C 709
stay of action in state court; allowance of amendments thereafter, 74 C 616
docket entries in bankruptcy court as a record, 75 C 612
suits by receiver in bankruptcy in state courts; bonds, 75 C 636
whether federal court can order state receiver to give up assets, quaere, 84 C 712
trustee should apply to state court for orders on receiver, 84 C 712
receivership suspended by bankruptcy within four months, 84 C 712
federal acts supersede state acts, 88 C 70, 90 C 601
farmer may make voluntary assignment, not forced into bankruptcy, 88 C 70, 90 C 601
farmer cannot go into voluntary insolvency in state court; can in federal court, 90 C 601
States have full power in bankruptcy except as Federal Act controls, 90 C 601
state laws in force as to persons not reached by Federal Act, 90 C 601
Probate Courts have jurisdiction of involuntary insolvency against farmers, 90 C 601
extension of time to present claim to receiver, discretionary, 91 C 359
applicant for poor debtor's oath can show he had been a bankrupt, 93 C 271
conclusiveness of adjudication; court presumes that other steps in proceedings were taken regularly, 93 C 276
mutual debts, matured or not, may be adjusted at any time before bankruptcy, 96 C 374
whether one may be declared a bankrupt after his death, 98 C 356
purpose of Bankruptcy Act, 104 C 314
set-off of mutual debts, 108 C 497
life insurance policy is asset of bankrupt, 119 C 574
whether or not bankruptcy court will stay foreclosure proceedings in state court under 77B is matter within its discretion, which has been frequently exercised by declining to interfere with action of state court, 123 C 9
reorganization proceedings in federal court under Bankruptcy Act did not oust Superior Court of jurisdiction to vacate its foreclosure judgment and allow withdrawal of action, 123 C 9
foreclosure of mortgage existing prior to bankruptcy not affected by reorganization proceedings under Bankruptcy Act, 123 C 12
Section 77B; proceedings and authorization for transfer of assets; rights of stockholders, 123 C 631
filing of voluntary petition for reorganization which involves transfer of assets of corporation must be authorized by meeting of directors or stockholders, 123 C 631
——not so transfer of assets under plan of reorganization which has been confirmed by court, 123 C 631
check drawn by trustee to pay dividend on funds deposited in a designated depository *held* not to operate as an assignment; under statute check will not operate as assignment unless intention that it should do so is shown by circumstances, 128 C 476
adjudication does not absolve bankrupt from his agreements, terminate his contracts or discharge his liabilities, 129 C 290
——where special defense was that defendant had been adjudicated a bankrupt, whether or not he made false statements inducing loan was immaterial issue as to plaintiff's right to judgment on note, 129 C 290

§ 2. Rights and Duties of Trustee in Bankruptcy

under act of 1800, assignee in bankruptcy could bring ejectment, 2 D 96
——meaning of "debtor" in § 56 of act of 1800, 2 D 97
under act of 1800, assignee in bankruptcy must prove title in ejectment by original deeds, 3 D 267
right of action on tort did not pass to assignee in bankruptcy, 3 D 273
assignee in bankruptcy can avail himself of any remedy open to attaching creditors, 36 C 585
assignee in bankruptcy not bound to assume leasehold estate unless beneficial, 44 C 446
——has reasonable time to make his election, 44 C 447
——sale of lease by assignee, for large sum, implies his acceptance, 44 C 449
——evidence of retaining counsel to defend summary process admissible as to acceptance, 44 C 448
assignee is bound to return surplus to original owner, 51 C 309
——equity will treat easement not needed as if reconveyed, 51 C 309
conveyance by assignee *held* not to bar dower; it passes only bankrupt's interest, 66 C 411
right of trustee to sell and convey; necessity of approval by referee, 75 C 611
estate in which bankrupt has only beneficial interest, as equitable remainder, passes to trustee; rights of one purchasing it, 76 C 522
trustee entitled to assets of receiver in state court, 84 C 712
trustee has no greater right than bankrupt to remove fixtures, 87 C 129

trustee has same title as bankrupt to property, 91 C 354
trustee cannot recover bank deposit made for benefit of third person in action to which that third person is not a party, 97 C 303
effect on pending executory contract of refusal of trustee to adopt it as basis of claim, 98 C 424
sale of lease belonging to bankrupt estate must be made subject to approval of bankruptcy court; and in action to enforce it against purchaser, landlord must prove compliance with Bankruptcy Act, 102 C 574
order by bankruptcy referee to sell "all goods, wares, merchandise and fixtures" does not include lease not inventoried as part of estate, though trustee confirms the sale and believes lease sold, 102 C 574
——where lease not validly sold, though purchaser pays rent he does not thereby become tenant under lease, 102 C 574
trustee is not "personal representative" of vendee under conditional sales law, 105 C 584
——trustee as representative of creditors, 105 C 587
right of trustee to require application of payments in same way bankrupt could, 105 C 623
right of trustee to vested remainder; gift of farm, to be sold after ten years, meanwhile interest to be distributed to beneficiaries, with alternative provision if any died before sale, *held* to create vested remainder in beneficiary passing to trustee, 108 C 339
property vesting in trustee includes bankrupt's rights under executory contract to purchase, 110 C 583
trustee takes title as of date of adjudication to property owned by bankrupt at time of filing of petition, 110 C 583
——meanwhile bankrupt may deal with property in good faith subject to right of trustee, when appointed, to renounce contract, 110 C 583
right of action for personal injuries did not pass to trustee by adjudication in bankruptcy, 123 C 68
——only rights of action arising upon contract or from unlawful taking or detention of or injury to property pass to trustee, 123 C 68

§ 3. Preferences; Fraudulent Transfers; Liens

an attachment is a lien within act of 1800 de bankruptcy, 1 D 122
levy of execution not vacated by bankruptcy, though judgment be on suit brought within four months, 36 C 580
dissolves only those attachments made within four months preceding, 37 C 342
bankruptcy pending suit; judgment to be limited to property attached, 45 C 500
estoppel of creditors participating in void proceedings to institute new ones, 72 C 709
effect of attachment made more than four months before bankruptcy; appeal of bankrupt, though judgment can be satisfied only out of land fraudulently conveyed by him, 74 C 616
effect of finding by referee as to existence of attachment lien and amount of attaching creditor's claim, 74 C 616
trustee may avoid conveyances fraudulent as to creditors, 75 C 635, 78 C 679, 81 C 116
sale on credit by bankrupt to bona fide purchaser holds, 75 C 636
what constitutes a "preference"; recovery of payment which is such; entries in bankrupt's books as evidence to prove his insolvency, 80 C 566
when bank's retention of bankrupt's deposit not a preference, 81 C 636
corporation cannot use its funds to adjust equities between its stockholders; stockholders must refund in bankruptcy, 82 C 559
bankruptcy *held* not to invalidate attachment bond, 84 C 331, 90 C 507
null and void deed does not make grantee a preferred creditor, 85 C 40
local law determines whether real estate could be sold before bankruptcy, 85 C 40
unrecorded deed, mortgage, or defeasance void against creditors, 85 C 40
the surrender of a security, void against creditors, in order to take another in its place, does not put party in a better position, 85 C 40
preference defined, 85 C 45
accommodation indorser must refund preferential payments to prove claim, 86 C 690
preferential payments within prohibited time recoverable, 86 C 690
interpleader to determine if fund goes to trustee or creditor, 88 C 633
when order for payment of a claim not binding on trustee, 88 C 634
order on bankrupt's agent to pay money within four months of bankruptcy and without consideration, void, 88 C 639
taking actual possession by pledgee within four months not a preference, 90 C 416, 424
presumption is that one was acting in good faith, 90 C 416, 425
that creditor attached bankrupt's store may tend to prove knowledge of insolvency, 90 C 469
schedules as evidence of, 90 C 472
delivery of goods to pledgee after insolvency that are not the same as those described in the pledge which was given before insolvency is a preference, 91 C 57

statement of condition prior to bankruptcy may show fraud, 91 C 482
attachment liens more than four months prior to bankruptcy sustained, 92 C 11
one had no claim on funds in bankruptcy because no valid lien, 93 C 129
lien of pledgee on instalments collected by trustee, 93 C 129
effect of notice of pledge given debtors after pledgee knows of insolvency but before bankruptcy, 93 C 129
pledged stock for which pledgee did not give a valuable consideration can be recovered by trustee, 94 C 597
bond for attachment void if owner of attached property was insolvent when bond was given and adjudged bankrupt within four months, 95 C 551
where contractor becomes bankrupt, subcontractors without liens have no right to demand payment from balance due him but can only claim against his estate, 96 C 223
what constitutes preference, 96 C 374
reasonable belief by creditor that debtor is insolvent requires what, 96 C 375
though debtor is bankrupt a month later, bank does not receive preference by securing payment of his notes, one by charging it against his account and the other by a check, though when first note was due he had no funds to meet it, 96 C 375
——and this, though one note was not due when paid, 96 C 375
——this constitutes a set-off within terms of law, 96 C 375
evidence of trade acceptance drawn by debtor and protested by bank but not shown to have been accepted by him or known to creditor no proper evidence of his insolvency, 96 C 375
——so statement of financial condition made by stranger, 96 C 375
insolvency of bankrupt as element in preference; mere borrowing by him does not show it, 97 C 202
grantee's belief in grantor's insolvency an essential element of a voidable transfer, 98 C 356
essentials of complaint of trustee to recover property conveyed by bankrupt in fraud of creditors, 99 C 307
——examination of bankrupt not such process of law as justified admitting in evidence testimony of witness who thereafter dies, 99 C 307
——nature of such examination, 99 C 325
preferential payment recoverable by trustee, when, 100 C 445
insolvency not proved by evidence of proceeds of sale by trustee seven months later, nor by evidence of amount of appraisal three months later, without further evidence as to intervening transactions affecting the property, 100 C 447
delivery of stock by insolvent broker to purchaser on margin upon payment in full not a preference; otherwise, if payment in full is not made, 101 C 118
in action by trustee to recover property fraudulently transferred, deficiency of assets need not be shown, 108 C 58
——conveyance within four months before bankruptcy is void, 108 C 58
——finding that transfer made within that time substantiated by proof of appointment of trustee within that time as adjudication must have preceded it, 108 C 58
wide latitude allowed as to time in admissibility of evidence where fraud is involved, 108 C 58
testimony of witness since deceased before referee on general examination of bankrupt not admissible in subsequent action against bankrupt, 108 C 58
——but where action is for conspiracy in fraudulent conveyance of property by bankrupt to her mother, their statements are admissible as declarations of conspirators, 108 C 58
to avoid an attachment, defendant must have been insolvent when it was made, 110 C 125
——what constitutes "fair valuation" of property as regards insolvency, 110 C 125
——if attachment is dissolved, no action lies on statutory bond releasing it, 110 C 125
——that trustee had collected nothing on claim as evidence that it was worthless, 110 C 125
——admission of schedules in bankruptcy in action on bond to prove liabilities *held* harmless, if erroneous, 110 C 125

§ 4. Claims

waiver of dividend on promise of bankrupt to pay in full *held* sufficient to prevent running of Statute of Limitations, 52 C 189
presentation of claim must be without condition or reservation to constitute waiver of future action of creditor, 86 C 234
limitation of one year to prove claim does not apply to one liquidated by litigation after the year, 86 C 690
accommodation indorser is a creditor, 86 C 690
what partnership creditors are entitled to, of assets, 87 C 268
all creditors are treated alike unless law provides otherwise, 88 C 185
secured creditor first applies security, balance out of estate, 88 C 537
one holding security can pursue all remedies at same time, 88 C 537
creditor attaching more than four months before bankruptcy must collect out of property attached, 92 C 12

trustee must pay bank that had discounted notes his collections on conditional bills of sale that secured them, 94 C 210

claim owing at time of bankruptcy is provable debt whether due or not, 96 C 382

where principal debtor bankrupt, creditor not bound to present and prove claim in bankruptcy court prior to action against guarantor, 104 C 404

plaintiffs claimed preference over other members of association who signed waiver authorizing transfer of its funds to K Company, now bankrupt, and waiving all claims to them, 118 C 521

——*held* intent of waiver was to place funds temporarily at disposal of K Company and not to relinquish rights of signers in funds, 118 C 521

——and as association's claim in bankruptcy was allowed in full, plaintiffs were not prejudiced by waivers and not entitled to preference, 118 C 521

statement in claim filed by creditor that claim was filed without prejudice to its right to recover on debt assigned to it as security was sufficient reservation of its right to enforce security, 128 C 4

allowance of claim in bankruptcy court does not constitute judgment as to issues involved which are binding on another creditor who has filed claim, unless latter intervenes, 128 C 4

——mere right to intervene does not make him party so that decision becomes binding in subsequent proceedings between two creditors, 128 C 4

presentation of general claim ordinarily waives right to resort to any security held for its payment, 128 C 6

§ 5. Discharge of Bankrupt

debtor's effects here not relieved by English commission in bankruptcy, K 313

discharge of bankrupt, after new promise to his assignee, is no bar to suit by assignee, 1 R 108

discharge in bankruptcy, after attachment, no bar to suit but execution issues only against property attached, 1 D 123, 37 C 345

bankrupt is liable to surety who is subjected after bankruptcy, 3 D 309

debtor's discharge from bankruptcy cannot be collaterally impeached, 18 C 250, 36 C 276

——at least not until notice of such intent be given, 18 C 250

——may be shown to be void in law, as for fraud, 36 C 277

discharge under composition is a discharge by operation of law, 44 C 591

——debt so discharged is a consideration for new promise to pay original debt, 44 C 593

——debt so revived not postponed to new debts on a second bankruptcy, 44 C 594

a discharge from bankruptcy does not affect the State as a creditor, 47 C 404

judgment against bankrupt pending proceedings in bankruptcy, 49 C 46

——United States bankruptcy law does not require stay of suit except on application of bankrupt, 49 C 47

——request for leave to plead discharge in bankruptcy, when obtained, not an application for a stay, 49 C 47

——if otherwise it was not error to proceed six months later by mutual consent, 49 C 47

——no presumption that proceedings in bankruptcy were pending at time of judgment, 49 C 47

——effect of failure to apply for discharge in bankruptcy for two years, 49 C 47

discharge in bankruptcy, if unpleaded, will not avail against a judgment; especially against a codefendant, if judgment be paid by codefendant, 52 C 111

under United States act, discharge must be pleaded by bankrupt, 52 C 111

——guilty of laches unless he does so, 52 C 117

discharge in bankruptcy is by operation of law, not by act of parties, 52 C 189

discharge from bankruptcy does not prevent special judgment in pending suit, 84 C 712

bankruptcy of defendant does not prevent further prosecution of action for special purpose, 86 C 234

denial of discharge gives creditor all former rights, 86 C 234

discharge precludes rendering of general judgment against bankrupt, and limited judgment only granted where justice so demands, 101 C 26

where principal in bond given to prevent attachment has been through bankruptcy, neither general nor special judgment can be given against him in order to reach surety, 101 C 26

acceptance of composition offer as discharge of debt, 101 C 29

attachment bond, if in statutory form, released by an insolvency and bankruptcy which would have discharged attachment, even though bond for amount less than directed to be attached, 101 C 541

new promise to pay debt discharged by bankruptcy; if conditional or contingent; acceptance by promisee and fulfillment of condition are essential, 104 C 311

creditor's acceptance of new promise to pay discharged debt will be implied, if beneficial, or if he brings suit, 104 C 311

where action is on promise to pay discharged debt and not based on its nondischargeability, evidence that debt was result of fraud *held* inadmissible, 104 C 311

judgment obtained by guest in automobile against owner for reckless disregard of his rights is not a liability for "wilful and malicious" injury within meaning of Bankruptcy Act excepting such liabilities from discharge, 119 C 532

——wilful and malicious injury is one inflicted intentionally without just cause or excuse, 119 C 532

——distinction between such act and one which was intentional in the sense that it was voluntary, 119 C 532

BANKS AND BANKING

§ 1. In General
2. Rights, Duties and Liabilities
3. ——In General
4. ——Checks, Notes, Drafts and Other Instruments
5. Deposits and Depositors
6. Savings Banks and Departments
7. National Banks
8. Banks in Receivership
9. ——In General
10. ——Set-off
11. ——Distribution of Assets; Classification of Claims; Preferences
12. ——Taxation Questions

See also Bills and Notes; Corporations; Gifts § 4; Taxation § 18

§ 1. In General

by subscribing for stock of bank, an ecclesiastical society becomes a stockholder, 7 C 470

——a part of the corporation and subject to its debts, 7 C 474

act of 1855 de opening subscription to stock of bank, to charitable association, 26 C 65

——applies only to bank organized under law of 1852, 26 C 65

nontransferable shares of charitable society, entitled to dividends from surplus, made before purchase, 26 C 272

subscription to stock, with privilege of withdrawal after six months' notice; liquidation, 38 C 580

——subscribers are stockholders, not creditors, after notice, 38 C 581

impliedly extended, 41 C 348

law, not the usage of banks determines the contract implied by indorsement, 50 C 188

capital stock cannot be paid back to stockholder, 52 C 98

stockholders supposed to know provisions of charter, 52 C 100

whether transaction was a sale of notes to a bank, or a loan by bank to a firm is a question of fact, 54 C 273

on return of note indorsed to bank for collection, title is in indorser, 76 C 126

no presumption that president of bank is real as well as nominal head, 79 C 348

duty of directors to exercise oversight of officers and employees, 82 C 8

cashier's right to certify his own check, 82 C 21

when notice to president of a bank is not notice to bank, 82 C 505

foreigner is presumed to know bank's rules, 85 C 225

"reasonable discretion" of officers construed, 87 C 341

bank must plead by-laws if it relies on them, 87 C 341

burden on bank to prove genuineness of orders relied on, 87 C 341

by-laws to be printed so as fairly to be presumed to come to depositor's knowledge, 87 C 345

directors must comply with statutes, by-laws, and usage of banking, 89 C 451

no assent to violation of law in voting dividends not earned unless the facts are known, 89 C 451

directors must use approved precautions against known risks of the business, 89 C 451

failure to require trial balance is want of due care, 89 C 452

reports of treasurer, auditor, bank commissioner, not substitute for balance sheet, 89 C 452

where double entry, directors should compare one set of entries with other, 89 C 452

directors not relieved by annual audit of savings bank under statute, 89 C 452

directors whose only negligence is want of supervision and who are without actual or constructive notice of wrong can plead Statute of Limitations, 89 C 452

several indorsees for collection may each give

notice of dishonor to immediate indorser, 91 C 674
money on deposit in another State taxable where owner lives, 92 C 316
when notice by a bank to a guarantor is not essential, 92 C 643
bank check, effect of certification, 93 C 400
pledge of stock to secure officer's indebtedness can be recovered by trustee if no valuable consideration passed, 94 C 597
statute requiring private banker to give bond before doing business as banker constitutional, 94 C 644
law de surety bonds to protect customers of a private bank, 95 C 10
private banking; bond valid, though enforceable by state officer, 95 C 11
failure of bank commissioner to examine bank, no defense on bond of private bank, 95 C 11
private understanding between principal and surety is immaterial, 95 C 11
liability of surety and damages, 95 C 11
history of regulation of private banking, 95 C 18
contract can be approved by board of trustees of trust company impliedly by acts and conduct; need not be by formal vote, 97 C 252
motion by State and bank commissioner to reopen judgment granting application of financial company to change name to Bankers' Trust Company, 109 C 45
no corporation other than bank or trust company shall use as part of its name or as a designation of business carried on, "bank" or similar words, 109 C 48
transaction with industrial bank, including giving of note and purchase of investment certificate, *held* to be in effect a loan and nothing more, 111 C 84
——statute as to investment certificates being regarded apart from loan is inapplicable where bank did not attempt to do business under it in good faith, 111 C 84
——bank *held* guilty of usury and so could not recover money loaned, 111 C 84
private banker defined, 114 C 660
when maker's account is charged with amount of check he is no longer liable on it, 115 C 1
fact that bank under its charter conducted both a savings and commercial department did not divide it into two separate institutions, 122 C 171
since Revision of 1930 industrial banks not subject to usury laws, 125 C 313
statute does not authorize garnishment of contents of box, 126 C 169
as to relationship between institution renting safe deposit boxes in vault and box holder, 126 C 172
bank account in names of two or more with right of survivorship does not create joint estate in technical sense; survivor's right is subject to succession tax, 128 C 557

§ 2. Rights, Duties and Liabilities

§ 3. ——In General

statute forbidding banks to make loan or discount on pledge of their own stock refers to direct and specific pledge for a particular debt; not inconsistent with more general lien for stockholder's debt, 26 C 144
may properly loan executor money on security, for immediate wants of estate, 48 C 565
——not bound to see to the proper application of the loan, 48 C 565
——not chargeable with knowledge of executor's fraud, when, 48 C 567
statute forbidding loans on its stock implies prohibition of purchase of stock by corporation, 52 C 99
——creditors may follow capital so paid into hands of stockholder, 52 C 100
fraud of cashier not imputable to bank, 72 C 666
where bank officer steals bonds and, using them as collateral, secures money which he deposits to the order of the bank to conceal embezzlements, bank bound to repay money to owner of bonds; knowledge imputed to it; interest allowed, 80 C 92
bank *held* not bailee of bonds placed in its vault by bank officer for his own accommodation, 80 C 100
cashier of bank was also administrator of an estate; *held,* his misappropriation of estate's funds was for benefit of bank and could not be kept against beneficiaries of estate, 82 C 8
actual knowledge of defalcation not necessary to hold director, 82 C 8
money fraudulently obtained with knowledge cannot be retained, 82 C 8
negligent ignorance of director creates liability for fraud of officer, 82 C 8
action of cashier is knowledge of the bank, 82 C 8
not liable for money drawn by administrator for own account, 82 C 9
need not supervise trust account to see if it administered right, 82 C 9
where an action is on behalf of bank, there is nothing to prevent Statute of Limitations from running, 89 C 453
appointment of foreign trust company ancillary administrator or executor by Probate Court is a nullity, 92 C 649
right of trust company to act as administrator or executor, 92 C 655
bank holding fund deposited by life tenant to her own and another's account, without right to give interest to that other, is open continuing trustee for remaindermen after death of life tenant, 96 C 326
speaking generally, banks in this State have

implied power to borrow money and pledge their assets as collateral, 119 C 123
breach of trust by bank or trust company trustee in making investment in notes and mortgages in its own name; damages, 121 C 558 and see TRUSTS AND TRUSTEES

§ 4. ——Checks, Notes, Drafts and Other Instruments

bank collecting note, not legally obliged to indorse, 12 C 311
duty of forwarding bank to give what information to collecting bank, 12 C 311
bank collecting note is not agent of forwarding bank, 12 C 313
indorsement of certificate of deposit by bank renders it liable as maker or drawer, 14 C 383
custom of banking not to notice erasure of printed matter on note binding only on those to whom known, 31 C 182
custom in respect to paper held for collection; duty of collecting bank, 36 C 339
collusion between cashier and maker of note; fraud; when bank liable, 36 C 341
payment of check made to unauthorized agent under suspicious circumstances; bank liable to principal, 41 C 427
bound to presume trustee is doing his duty if his checks are properly drawn, 48 C 568
bound to know whether or not town treasurer is authorized to borrow money for town, 49 C 552
——if unauthorized, by paying his overdrawn checks or discounting his official notes, bank merely loans to him individually, 49 C 552
——treasurer's payment of bank by proceeds of official notes thus discounted is not an appropriation of the loan to town uses, 49 C 552
——town on obtaining knowledge may repudiate such unauthorized borrowing and payment, 49 C 552
——and recover the amount of these unauthorized loans from bank, 49 C 553
knowledge of officer of defect in negotiable instrument not imputed to bank where he did not know that instrument was presented to bank, 79 C 351
bank owns a note discounted, 81 C 637
where president receives notes to be used, as per instructions, for charity, bank is stakeholder only, 82 C 504
notes, owned by bank where payable, need not be formally presented for payment, 83 C 332
bank is agent for holder of note it receives for collection, 87 C 248
relation between forwarding and collecting bank that of principal and agent, or debtor and creditor, according to its duties, 88 C 185, 202
bank not liable to drawee where it discounts draft with bill of lading attached, if payee does not perform conditions; otherwise if it purchases draft; bank must act in good faith, 88 C 415, 95 C 300
purchaser of imperfect automobile can recover from bank that bought the draft he had paid, even if he had right of action against manufacturer, 88 C 415
relation of collecting bank to owner is one of law, 91 C 674
——holder for collection is agent of the owner, 91 C 674
bank discounting drafts with bill of lading attached, does not have to return money paid if seller does not perform contract provided bank acted in good faith and without knowledge, 95 C 300
bank held two notes which maker had no funds to pay; later he had funds and bank secured payment by charging one against his account and by check for other, which was not matured; a month later maker became bankrupt; *held* bank did not secure voidable preference, 96 C 374
——right of bank to set off unmatured notes against accounts at any time, 96 C 374
agent authorized to deposit check who has at times cashed checks drawn to his order, etc., *held* not to have apparent authority to get cash on checks drawn on one bank and payable to another where drawer also had account, 99 C 494
one bank cannot take advantage of facts which depositor would have learned on examination of another's statements and vouchers, because duty is owed only to latter, 99 C 494
bank receiving commercial paper for presentment, acceptance, and collection, governed by laws, customs and usages of its own locality, 105 C 33
in collecting sight draft and delivery of stock sent it by seller, bank is agent of latter, not of buyer, 111 C 709
——buyer entitled to notice and demand, 111 C 709
——hence sending stock with invoice, which bank refused because buyer had no funds there, is not fulfillment of agreement to send with sight draft attached, 111 C 709
——since sender agreed to make bank its agent, action of bank became part of its contract with buyer, 111 C 709
bank may escape liability for paying forged checks by showing it was not negligent and depositor was; estoppel, 115 C 50
where checks were not produced for inspection *held* court not compelled to draw inference that they were forged, 115 C 50
——and if it were, production of checks was necessary to establish bank's negligence, 115 C 50
description of "trust receipt" employed in importing trade to secure banks which accept drafts against bills of lading for purchase price of goods imported, 116 C 487

——use in marketing automobiles, 116 C 487
——title of bank to property against importer's creditors or receivers, 116 C 487
defendant bank applied proceeds of note indorsed by M which it discounted for P in payment of his unmatured notes, knowing P to be insolvent; *held* bank by discount created indebtedness on its part to P which became asset of P's which bank took out of his estate, 117 C 321
bank receiving for collection draft with bill of lading attached under instructions to deliver latter only on payment of draft is liable in conversion for surrendering bill without collecting draft, 117 C 472
whether relationship of bank and one sending it draft for collection continues to be that of principal and agent after bank has collected draft, or becomes that of debtor and creditor, 118 C 490
bank paying check after corporation had voted to dissolve is not a creditor entitled to retain money improperly paid to it on ground that it represented its pro rata share as creditor of corporation, 121 C 77
verdict based on breach of contract by bank in failing to hold checks for plaintiff deposited with it as agent, sustained, 121 C 201
while making of agreement with teller to collect checks for person from his debtor and hold them for him not ordinarily within scope of teller's authority, consistent course of conduct continued over long period sufficient to bind bank, 121 C 205
sole duty of drawee bank to whom check presented for payment is to determine genuineness of drawer's signature, 123 C 616
——as to all other matters including genuineness of indorsements it may rely on warranties expressed or implied from indorsement of presenting bank, 123 C 616
——so drawee bank which pays check to presenting bank on forged indorsement of payee's name may recover though presenting bank has accounted to its principal, 123 C 617
——forged indorsement passes no title to presenting bank which hence has no right to collect on paper, 123 C 617
by presenting check for payment bank asserts its ownership or right to collect and drawee in making payment can rely thereon, 123 C 617
——presenting bank obtains drawee's money without right, by mistake, and right of action accrues as soon as payment is made, 123 C 617
bank which pays on forged indorsement of payee's name a check or draft drawn by it, purchased from it by third party, is to be regarded as thereby parting with its own money, 123 C 617
liability of collecting bank to repay money paid out by drawee bank on forged indorsements is absolute and not dependent on liability of latter to its depositor or drawer, on ground that there is no privity between drawer and collecting bank, 123 C 617
principle that condition precedent to recovery of money paid by mistake is finding that receiver ought not in good conscience to retain it not applicable, 123 C 617
on requisition of H Company, plaintiff bank made draft payable to X which came into possession of S who forged indorsement and deposited it in defendant bank which indorsed it and collected from plaintiff; H Company paid plaintiff amount of draft; *held* defendant liable, 123 C 617
draft was assigned by plaintiff to H Company, by it to a surety company which had indemnified H Company and by it back to plaintiff; prior to commencement of action S made restitution to H Company; *held*
——that if restitution was made before assignment to surety company that defense would be available in action against defendant by plainitff as subsequent assignee, 123 C 618
——and this fact provable under allegation that assignment was made "prior to commencement of this action," 123 C 618
defendant bank not entitled to payments made to plaintiff under an indemnity bond, 123 C 618
——nor was benefit of payments made by surety company to H Company on indemnity bond available to party liable to H Company on account of payment upon forged indorsement, 123 C 618
rights as between bank which cashed checks drawn to nonexistent person D, indorsed by one to whom sent in D's name, and drawee bank, 126 C 179 and see NEGOTIABLE INSTRUMENTS
where indorsement of check is forged it passes no title to bank cashing it, 126 C 183
statute that check does not operate as assignment of funds and that bank not liable to holder unless it accepts or certifies check, 128 C 476
——controls liability of bank to holder, and any common-law right of latter to recover as third party beneficiary supplanted, 128 C 476
——but check in connection with proof of other circumstances may operate as assignment vesting in holder exclusive claim to fund, 128 C 476
——check drawn by trustee in bankruptcy to pay a creditor's dividend not within this principle, 128 C 476
no implied acceptance by bank of check, which is a bill of exchange, unless in writing signifying drawee's assent, 128 C 476

§ 5. Deposits and Depositors

when one becomes an ordinary depositor; when a special depositor, 7 C 494
ownership of money on deposit, 64 C 365, 80 C 423
gift of bank deposit, 73 C 640, 79 C 260, 425
one who deposits check has implied notice of its payment, 74 C 546
by-laws printed in deposit book enter into depositor's contract, 77 C 295, 87 C 341
liability of bank for paying forged order; contract limiting liability; negligence of bank and of depositor, 77 C 295, 85 C 225, 87 C 341
bank can retain deposit of insolvent depositor to pay note due it, 81 C 636
bank deposit is a debt, 81 C 637, 92 C 316
interest can be demanded on a deposit when, 82 C 9
in spite of bank rules, it must use reasonable care, 85 C 225
not negligence to pay to wrong persons if recognized system of identification used and it has competent clerks, 85 C 225
relation between savings bank and depositor not technically that of debtor and creditor, 87 C 341
no interpleader to determine ownership of separate deposits in different banks, 88 C 157
certificate of deposit creates relation of debtor and creditor, 88 C 185
where cashier, with approval of president, received deposit for a special purpose, bank could not later assert a claim of its own inconsistent with such special purpose, 97 C 303
——could not claim a lien or set-off for indebtedness due to it, 97 C 303
——but trustee in bankruptcy of depositor could not recover it in action to which person for whose benefit deposit was made was not a party, 97 C 303
depositor how far chargeable with knowledge of errors in his bank account, 99 C 506
right of set-off includes unmatured debt of insolvent, 108 C 497
——bank holding unmatured note of insolvent debtor, 108 C 497
——business of banking as affected by a large public interest, 108 C 497
——occupies trust relationship to depositors, 108 C 504
deposits in commercial bank create relation of debtor and creditor, 110 C 397
as giving of check is not payment, obligation to depositor is not discharged by this alone, 110 C 397
——in absence of closing account, balancing pass books or like circumstances, showing it was taken in payment, 110 C 397
——but see 118 C 595
whether deposit by father in name of son is present gift or one to be effective at death is question of fact, 110 C 461
——right of father to transfer fund to himself and liability of bank, quaere, 110 C 461
bank *held* not liable for accepting for deposit check used for certain purpose, indorsed by plaintiff's manager contrary to instructions, but where plaintiff, by course of dealings, knew or ought to have known of use of its funds for such purposes, 110 C 635
——plaintiff estopped where funds were used in furtherance of its business, 110 C 635
difference in relation of deposits in commercial bank and in savings bank commented upon, 114 C 564
delivery by bank to depositor of statement is a rendition of account and retention for unreasonable time makes it an account stated, 115 C 50
——burden that on depositor to prove fraud or mistake, 115 C 50
rendering account to depositor imposes obligation on him to examine it with reasonable care and promptness, 115 C 50
definition of "depositor"; depositor generally speaking is one who delivers to or leaves with bank money subject to his order, either on time deposit or subject to check, 116 C 609
distinction between loans and deposits in common parlance (reference), 116 C 609
deposit may be assigned otherwise than by giving check; where bank is duly notified of valid assignment it is bound, 117 C 279
commercial paper indorsed unrestrictedly and deposited with bank which gives immediate credit therefor and right to draw thereon prima facie becomes property of bank, 117 C 407
——relation between bank and depositor is that of debtor and creditor, 117 C 407
——the legal effect of depositing a check or draft depends upon intent of parties, 117 C 407
——depositor and bank may agree that bank shall collect paper and credit it only when it is paid, 117 C 407
——but in absence of contrary intent it will be assumed that credit to depositor's account was accepted to be dealt with in ordinary course, 117 C 407
——but presumption of intention is rebuttable, 117 C 407
——if intention is that bank will not be responsible except as agent for collection, title remains in depositor, 117 C 407
——intent ascertained from considering conduct of business and practice to allow him to draw against deposit is significant, 117 C 407
——fact that deposits are credited subject to payment and bank has right to charge paper back to depositor does not prevent title passing, 117 C 407
——checks deposited in general account *held* to be deposit within term as used in statute

concerning distribution of assets through receivership, 117 C 407
where depositor draws check on bank and deposits it in another bank, latter becomes agent for collection, 118 C 586
where bank gives K a draft to close her account, with no agreement that it should discharge obligation of bank, and garnishee process was served on it before K cashed draft, there was an attachable debt, 122 C 166
——and bank did not become holder in due course by later cashing draft as it was charged with full knowledge of garnishment, 122 C 166
——and fact that K's account was in savings department, nil sig., 122 C 171
presumption that deposit by a person in name of himself and another, not his wife, is for purposes of convenience only cannot prevail where evidence established that a gift was intended, 128 C 203
where officer of plaintiff depositor was also officer of bank and fraudulently drew out funds of former without presenting book, bank was credited with withdrawals, 128 C 511
——knowledge of his fraudulent purpose could not be imputed to bank since his interests were adverse to it, 128 C 511
——bank received no benefit growing out of transaction such as would suspend operation of rule, 128 C 511
——it was within his authority to draw funds from the bank, and to that power the waving of the by-law requiring presentation of bankbook was an incident, 128 C 511
by-law requiring presentation of deposit book became a part of contract between bank and depositor, 128 C 517
——in absence of waiver, bank could not properly pay out any part of deposit except in accordance with it, 128 C 517

§ 6. Savings Banks and Departments

savings banks owning stock, are taxed thereon where bank is located, 20 C 116
depositors in savings banks are not, as such, stockholders, 20 C 117
savings bank is the agent of depositors, 38 C 206, 43 C 159
——losses of, to be borne by depositors, pro rata, 43 C 159
——not liable for loss apportioned to depositors, 38 C 206
——whether a statute validating such apportionment is per se a bar to recovery, quaere, 38 C 206
court will not decree specific performance of agreement to loan on mortgage without double security, 46 C 476
acts of trustees de facto are binding so far as other parties are concerned, 52 C 359
trustees may accept trust deed for security of claims, 52 C 361
——such acceptance under circumstances *held* to be in good faith and without negligence, 52 C 361
money in, is not regarded as concealed as to creditors, in determining whether owner has property for payment of debts, 52 C 516
passbook is not negotiable by itself, nor in connection with depositor's order, 60 C 308
——may be sold like any other nonnegotiable chose in action, 60 C 311
——the negotiability of instruments is to be decided by law, 60 C 311
no depositor can convey to another any greater right in the funds of, than he himself has, 60 C 310
——any defense good against original depositor is good against his assignee, 60 C 310
——unless there are facts to create an estoppel, 60 C 310
——bank not estopped to show that book was obtained by fraud and that no deposit was made, 60 C 312
——as against assignee of party perpetrating the fraud, 60 C 312
passbook of, obtained by fraud, is treated in law as not issued by bank, 60 C 313
dividends of savings banks are not apportionable, 73 C 114
order in such book giving right to withdraw certain sum, or "whatever is due"; order to withdraw for specified purpose; interpleader, 73 C 568
requirement of bond from treasurer of savings bank is in public interest; failure of directors to inform sureties of former default no defense, 78 C 388
income or profits of savings banks belong to depositors and are a part of the deposits, 81 C 261
surplus as a contingent fund; is owned by depositors, 81 C 266
by-law of savings bank cannot be utilized to defeat title of donee of deposit, 81 C 372
purpose of by-laws as to transfer of deposit in savings bank, 81 C 372
presumptive knowledge of savings bank's by-laws by depositor, 85 C 225
relation of savings bank and depositor not merely that of debtor and creditor, 87 C 341
savings bank must have knowledge of passbook loss before it can waive rights under statute, 87 C 341
savings bank book evidence of amounts credited, 87 C 406
statutory provisions for savings department give additional protection to depositors, 88 C 185
a savings department of a trust company is not a separate institution, 88 C 185

savings bank deposit not entitled to interest until declared, 88 C 186
savings bank directors must supervise officers and employees, 89 C 451
annual audit of savings bank required by statute does not relieve directors of their duty of reasonable supervision, imposed upon them by the common law, 89 C 452
accounts in savings banks are intangible personal property liable to succession tax at owner's domicil, 105 C 194
a mutual savings bank is also agent of depositor to invest and conserve his money, 110 C 397
savings banks; meaning of statute permitting loans only on real estate which is unincumbered, 112 C 656
difference in relation of deposits in commercial bank and in savings bank commented upon, 114 C 564
commercial and savings departments of bank are not separate institutions; segregation of assets of latter; right to transfer notes between, 115 C 1
interest on segregated assets in savings department not devoted to payment of depositors in that department, who share in them only as general assets of bank, 115 C 364
investment of savings banks in state bank prior to 1901, which converted to national bank, then reconverted to state bank, then merged with trust company, *held* to be exempt from tax under statute, 116 C 172
——effected only change of jurisdiction and not creation of new bank with new stockholders, 116 C 172
effect of statute de segregation of investments of savings department; title to them in bank, 119 C 115
relationship between depositors of savings department and assets thereof not within common-law conception of lien, equitable ownership or trust, 119 C 115
power of savings department to pledge assets to secure loan obtained by it to pay its depositors, 119 C 124
savings bank rarely, if ever, collects loan when secured and interest is paid, 121 C 422

§ 7. National Banks

subscribers to nontransferable stock are shareholders, 34 C 235
——State, a nontransferable stockholder in Phoenix Bank, 34 C 236
——not represented in national organization, after surrender of charter, 34 C 236
——act of 1864 is not absolutely binding on such bank, 34 C 238
right of holder of nontransferable stock to share in surplus, 34 C 238
qualified stockholders, represented in national reorganization, 34 C 246
——unless they dissented and withdrew, 34 C 246
act of 1864 de notice; acts of bank *held* a waiver of statute requirements, 34 C 247
statute de embezzlement applies to officer of national bank for embezzlement of special deposit, 34 C 296
——aliter, as to embezzlement of bank's funds, 34 C 296
estates in settlement are not exempt from liability on failure of national bank, 44 C 581
failure of national bank; judgment against administrator de bonis decedentis, 44 C 582
——estate of stockholder dying before insolvency of, is liable to assessment, 44 C 580
——administrator of such estate is not a stockholder within banking act, 44 C 581
stockholder of record is liable to assessment on insolvency of, though stock has been sold and not transferred on the books, 44 C 585
——so pledgees of stock having legal title and being stockholders by record, 44 C 585
——so trustees, if trust does not appear on books, 44 C 586
real estate of national bank not taxable, 74 C 449
application of state laws to national banks; receivership after expiration of charter to protect stockholders, 76 C 252
establishment of special trust fund in national bank; approval of comptroller of currency, 76 C 261
reducing capital stock of national bank, and charging off bad assets, so as to form fund for stockholders, as a dividend, 78 C 80
right of national bank to declare dividends, 78 C 80
excepting national banks from usury law is in recognition of the federal law, 82 C 233
national bank may act in any fiduciary capacity under Act of Congress, 94 C 648
limitations on power of State to control national banks; may not be discriminated against in favor of state banks, 94 C 651
national banks subject to paramount authority of federal government, 110 C 13
name conferred upon national bank not open to alteration or impairment by State unless used tortiously, 110 C 13
rights conferred on national banks prevail over attempted curtailment by State, 110 C 13
——such as depriving of trust powers, escheating deposits or suing in corporate name, 110 C 13
——but otherwise subject to State regulation, 110 C 13
national banks not relieved from common limitations as to use of name protecting against unfair competition, 110 C 13
conversion of state to national bank, and later conversion back to state bank by liquidation as national, *held* to effect change of juris-

diction only, and not creation of new bank with new stockholders, 116 C 172
subsequent "consolidation" with trust company *held* to be in reality a merger within meaning of statute exempting savings banks from taxation on certain investments, 116 C 172
——and statute, in any event, not intended to distinguish between merger and consolidation, 116 C 172
federal legislation de federal home loan banks reviewed, 128 C 87
——Federal Home Loan Bank of Boston is federal instrumentality controlled by federal home loan board, 128 C 89
——but state savings bank by reason of membership therein does not become ipso facto an instrumentality of United States, 128 C 89 and see Unemployment Compensation Act

§ 8. Banks in Receivership

§ 9. ——In General

after insolvency no stockholder can withdraw his shares, 7 C 469
appointment of receiver by comptroller is not a forfeiture of franchise, 36 C 334
disallowance of claim by receiver is not conclusive as to validity of claim, 36 C 339
estates in settlement holding stock are liable to assessment on failure of national bank, 44 C 580
——administrator of such estate is not a stockholder within banking act, 44 C 581
——judgment against administrator de bonis decedentis; effect, 44 C 582
stockholder of record liable to assessment on insolvency although stock has been sold and not transferred on the books, 44 C 585
——pledgees of stock having legal title being stockholders of record are liable, 44 C 585
——trustee also if trust does not appear on the books, 44 C 586
if Superior Court not in session proceeding to wind up insolvent bank can be brought before judge in chambers, 63 C 581
——purpose is to prevent further loss to those dealing with it or interested in its affairs, 63 C 581
application of state laws to national banks; receivership after expiration of charter to protect stockholders, 76 C 252
appointment of temporary and permanent receivers for national bank in state court; appointment of successor where one dies, 76 C 252
where stockholder applies for receiver, want of allegation that he has sought redress in the corporation to be attacked by demurrer, 76 C 262
authority to collect notes sent for collection ends with insolvency, 88 C 185
receiver of bank and trust company with savings department should keep record showing income from each department separately, 115 C 364
expenses of receivership of bank and trust company incurred for benefit of one department and capable of distinct application should be charged against it, 115 C 364
——where expenses are not capable of distinction, they should be apportioned among departments upon some fair and reasonable basis, 115 C 364
——it is the receiver's duty to keep accounts permitting such apportionment of expenses, 115 C 364
Superior Court has jurisdiction to authorize receiver to borrow money and carry on business; statutes do not limit this power in bank receiverships, 115 C 530
Superior Court *held* to have power to authorize receiver to borrow from Reconstruction Corporation for purposes of paying dividend to depositors in savings department, 115 C 530
——and to authorize him to pledge segregated assets to secure loan, 115 C 530
——loan is charge against assets in which such depositors have an interest only; what such assets are, 115 C 530
——whether loan is advisable as matter of business policy is matter for court to decide, 115 C 530
——notice to creditors claiming preference; order authorizing loan, 115 C 530
statutory provisions governing receiverships in general are applied in practice, so far as appropriate, to bank receiverships, 115 C 534
when deposit account of maker of check sent bank by Federal Reserve Bank was charged with amount of check, the check was paid by the maker, 116 C 614
M Bank, in financial difficulties, entered into agreement with C Bank transferring to it all assets, C bank assuming all liabilities; *held*
——from provisions of vote, agreement of transfer and practical construction gist of transaction was absolute sale, not transfer for purpose of liquidation for benefit of M Bank's creditors, 116 C 617
——and sale outside scope of statutes de sale by corporation except banks of all assets and not impliedly forbidden by them, 116 C 617
——creditor of M Bank cannot compel receiver of C Bank to segregate transferred assets for former's creditors, 116 C 617
appellant foreclosed from claiming transfer of assets from one bank to other void by course of conduct in acquiescing in it, accepting payments from transferee, and seeking to avoid transfer only when latter went into receivership, 116 C 617
——letter of president of bank accepting

transfer undertaking to pay landlord any judgment out of assets transferred, could not create equitable lien in property not capable of identification, 116 C 617
P made deed of land to bank in difficulties to enable it to make loan; deed held by bank commissioner pending investigation but never recorded until after bank went into receivership and loan never consummated; P *held* entitled to reconveyance, 117 C 58
assignment of deposit in bank which had been restrained from paying out deposits *held* binding on it where it was notified and acknowledged assignment, 117 C 276
restraining order by bank commissioner merely restrains bank from paying out funds or receiving deposits, 117 C 278
——otherwise right to exercise franchise remains unaffected until inception of receivership, 117 C 278
——but bank *held* to be competent to recognize transfer of title to deposit which it did by accepting assignment thereof, 117 C 279
appointment of receiver does not terminate corporate existence of bank, 118 C 21
——it suspends its power to conduct its business, enter into contracts, sell or pledge its property, etc., 118 C 21
——it might properly employ counsel, bring about discharge of receiver and resume its business, 118 C 21
——and terms of indemnity bond would continue operative unless it was terminated, 118 C 21
right of superintendent of banks of New York to enforce in our courts assessment against stockholders of insolvent bank, 119 C 83
——he has right to do this under full faith and credit clause of the United States Constitution, 119 C 83
——the receiver of an insolvent corporation is vested with a similar right, 119 C 83
——where cause of action is vested by statute in superintendent, he does not need authority of court to sue, 119 C 83
——enforcement by him not such a special remedy that our courts should refuse to entertain action, 119 C 83
action by receiver of nonresident joint stock land bank joining as defendants stockholders residing in different counties, 121 C 220
counterclaim based on negligence of plaintiff bank while receiver of defendant bank, in cancelling bond which would have covered latter, properly stricken out as not connected with matter in controversy and not debt which was mutual, 123 C 618

§ 10. ——Set-off

no set-off can be had of deposit, against debt to savings bank, on insolvency of bank, 43 C 159
——unless deposit was made in order to apply to debt, and such fact was known to officers of bank, 43 C 160
relation between savings bank and depositor may be that of debtor and creditor if certificate of deposit issued, 88 C 185
in savings department no set-off of what bank owes depositor; in commercial department there is, 88 C 185
indorser may set off his deposit in insolvent bank against liabilty on indorsement, when, 88 C 185
where relation of debtor and creditor exists between forwarding and collecting bank may be a set-off of cross claims if no trust fund involved, 88 C 186
debt due from insolvent to a partner not set off against joint indebtedness of partnership to insolvent, 88 C 186
private bank made deposit in trust company and received certificate in name of state treasurer which it delivered to him in lieu of bond; *held* could not be set off against deposit by trust company in private bank, 114 C 560
——deposit was trust for all depositors of private bank, 114 C 560
——fact that deposit was not segregated makes no difference, 114 C 560
——but interest on deposit may be set off, 114 C 560
right to set-off of deposit against loan by bank where funds were taken from savings department; where note is transferred from commercial to savings department for cash; where transferred to compensate for depreciation of assets, 115 C 1
commercial and savings departments of bank are not separate institutions; segregation of assets of latter; right to transfer notes between, 115 C 1
in absence of statute, right to set off deposit against note is not defeated because it will create inequality among depositors, 115 C 1
maker of note held by savings department of bank who has pledged bank book as security not entitled to set-off of deposit against note, 115 C 364
——receiver may realize on bank book and apply principal and interest to note, 115 C 364
depositor who uses trade name and signs note with real name and vice versa has same right of set-off as if he used true name as to both, 115 C 364
where bank was not insolvent at time of assignment of deposit in it to another bank, and latter paid consideration for it, former had no right of set-off of deposit against note not then due, 117 C 276
——title to deposit not affected by subsequent receivership, 117 C 281
depositor's right to set-off limited to indebtedness existing at time of bank's insolvency

and does not extend to debt which accrues thereafter, 118 C 18
——and where indemnity bond was cancelled after receivership by receiver, company not entitled to set off its deposit against unearned premium, 118 C 18
defendant took out certificate of deposit, had it changed to father's name, who later indorsed it in blank and gave it to plaintiff; latter presented it for payment but instead was induced to borrow on it and leave certificate as collateral; *held*
——defendant entitled to set off certificate against his note, when bank went into receivership, 118 C 42
——and fact that note not then due nil sig., 118 C 42
——defendant not estopped by reporting certificate as father's property when latter died or by signing distribution which included it, 118 C 42
——and acceptance of inventory and final account by Probate Court not adjudication of title to certificate, 118 C 42
——fact that certificate was transferred to father to avoid attachment by wife nil sig., 118 C 42
——nor could payment of interest on note after receivership constitute waiver of set-off, 118 C 42
right of depositor in commercial department of trust company to set off amount of deposit against his debt to that department, 118 C 44
finding that certain accounts were assigned to receiver for purpose of having all dividends declared applied on mortgage debt of father of owner of one of them, erroneous, 119 C 258
——and receiver without authority to accept them as set-off in full payment of debt, total of accounts being less than debt, 119 C 258
——and action of receiver in applying dividends as partial payment of debt unauthorized and void, 119 C 258

§ 11. ——Distribution of Assets; Classification of Claims; Preferences

on settlement of affairs of savings bank, sureties who have been compelled to make good loss through treasurer not entitled to recover money back; distribution of money; statutes limiting rate of dividend and requiring surplus are in interests of depositor, to whom income and profits belong, 81 C 261
presentation of deposit book to receiver of savings bank is sufficient, 81 C 261
all creditors are treated alike unless law declares otherwise, 88 C 185
relation of debtor and creditor exists between forwarding and collecting bank if amount is to be credited and remitted, 88 C 185
in insolvency depositors in savings and commercial departments of insolvent bank treated alike, 88 C 185
charter may provide certain trusts and deposits have a prior lien, 88 C 185
receiver of a bank or trust company pays claims as per statute or charter provisions, 88 C 185
savings bank deposit not entitled to interest until declared, 88 C 186
no interest allowed after insolvency declared; only up to time of adjudication, 88 C 187, 206
——if assets are sufficient to pay all other claims and expenses, interest will be allowed out of the surplus, 88 C 187, 206
distribution of assets of private banker; owner of money intrusted to him for transmission in same class with depositors under statute, 114 C 658
paper sent to bank for collection; relation of principal and agent created; test of whether trust continues after collection followed by insolvency, 115 C 1
agreement whereby collecting bank substitutes its own obligation for money collected is inconsistent with trust and creates status of debtor and creditor, 115 C 1
——no res to which equitable lien might attach, 115 C 1
Federal Reserve Bank not entitled to preference for checks collected for it by bank which latter remitted by its own drafts, 115 C 1
bank acting as fiduciary may deposit its trust funds in its own savings department but these deposits cannot be given preference over other deposits, 115 C 1
deposits in savings department of commercial bank become its property and are not, as in the case of savings banks, the property of the depositor, 115 C 1
——rights of depositor in segregated funds of department and against general assets of, bank, 115 C 1
——depositors in savings department must be treated equally, without preference to any, 115 C 1
deposits in commercial bank ordinarily create relation of debtor and creditor; this relation created when money is received, not when entered on books, 115 C 1
where intention is that title to deposit shall not pass to bank it is a special deposit and relationship is that of bailor and bailee, 115 C 1
amount deposited after 3 p. m., to be credited to depositor next day *held* general deposit and part of assets in hands of receiver, 115 C 1
money paid under World War Veterans Act to conservator of veteran and on deposit in insolvent bank *held* not entitled to pri-

ority on ground that title was in the United States, 115 C 326

interest on segregated assets in savings department not devoted to payment of depositors in that department, 115 C 364

——who share in them only as general assets of bank, 115 C 364

common-law right of State to preference in payment of debts due it from insolvent except as abrogated by statute, 115 C 393

statute construed and *held* to place state deposits on parity with other deposits in bank or trust company in receivership, 115 C 393

——withdraws these companies from the class of insolvents to which priorities in general insolvency statutes apply, 115 C 393

——and deposits by State of trust funds under law or will not entitled to special privilege of preference, 115 C 393

depositors in savings department have right to share with other depositors in general assets of bank to extent that they were not paid in full from segregated assets, 115 C 530

preferential payments by insolvent bank to creditors not void or voidable at common law in absence of secret trust for benefit of debtor, 116 C 335

——in early case it was held insolvent bank might legally prefer one creditor over another, 116 C 335

under statute the two elements of proof essential to recovery are that payment must have been (1) in contemplation of insolvency and (2) with intent to effect preference, 116 C 335

——that bank is actually insolvent and the payment necessarily preferential, not sufficient, 116 C 335

——payment made by insolvent to depositor in regular course of business not unlawful preference, 116 C 335

——such as withdrawal by depositor who has no definite knowledge of bank's insolvency during "run" on it, 116 C 335

——but where favored depositor is given advance information, or special facilities to withdraw, and the like, an intent to create preference inferred, 116 C 335

——when depositor has thus received preferential treatment not accorded depositors in general, resulting in preference, such payment may be held void, 116 C 335

T was treasurer of bank and agent for account of M, his mother-in-law; withdrawal of account by T during "run" when he knew bank was about to close, by having teller bring money to private office, *held* within statute, 116 C 335

——withdrawal was made in contemplation of insolvency and with intent to prefer M, 116 C 335

——T was acting as agent of bank and also of M, and his knowledge was her knowledge, 116 C 335

——withdrawal not in ordinary course of business and effected by use of facilities not available to others, 116 C 335

——and necessary element of fraudulent intent was present, 116 C 335

——as T actively participated in the tort, judgment rightly rendered against him as well as M, 116 C 335

preference accorded "depositors" by statute in assets of closed bank not intended to apply to situations other than usual meaning of term, 116 C 609

Reserve Bank of Boston remitted checks and note to bank for collection; latter collected and immediately sent remittance by drafts and checks which were not honored because receivership intervened; *held*

——Reserve Bank's claim not entitled to preference as "depositor," 116 C 609

——proper classification under statute under "all other liabilities," 116 C 609

depositor of check or draft for collection with insolvent bank, entitled to paper or its proceeds as against bank, since no title passed to it except as bailee or agent for collection, 117 C 407

——money received on collection can be recovered by depositor if it can be traced to particular paper, 117 C 407

——but where general deposit is made before insolvency, there can be no recovery in preference to other general depositors, 117 C 407

——where checks are indorsed and deposited in bank as cash or its equivalent, they become property of bank and on insolvency its depositor cannot follow them or their proceeds, 117 C 407

legal effect of depositing check or draft depends on intent of parties, 117 C 407

——in absence of special agreement, it will be presumed deposit of paper for credit to account was made and accepted according to custom prevailing and condition of account, 117 C 407

——and presumption is that title passed to bank, though this is rebuttable by proof of contrary intention, 117 C 407

——intent may be ascertained from course of conduct and of business; practice of drawing checks against deposit account, including uncollected paper, significant of transfer of title, 117 C 407

——fact that deposits are credited subject to payment or that bank has right to charge back dishonored paper against depositor instead of proceeding against maker, does not militate against passing of title, 117 C 407

——this right regarded merely that of in-

dorsee against indorser and hence not inconsistent with ownership, 117 C 407
facts *held* to establish that checks in question, upon being deposited and credited, became part of claimant's general deposit, and should be classified as a deposit in receivership, and not entitled to preference, 117 C 407
where instructions of forwarder to collecting bank are that drafts are cash items, not deposits, and funds collected not to be commingled with other funds of bank, bank (or its receiver) regarded as trustee of funds collected, 117 C 472
——but it must appear that proceeds, in some form, have gone into assets of bank, 117 C 477
——and where drafts were never collected there is nothing on which a trust could operate, 117 C 472
——maxim that equity regards as done that which ought to have been done not applicable, 117 C 472
——in instant case bank properly held liable as for conversion but claim properly classified as general and not entitled to preference, 117 C 472
whether relationship of bank and one sending it draft for collection continues to be that of principal and agent after bank has collected draft, or becomes that of debtor and creditor, 118 C 490
——presumption that one sending draft contracts with reference to known custom of banks to mingle funds when collected with their own, 118 C 493
——and deposit of proceeds of collection to credit of drawer creates relation of debtor and creditor, 118 C 493
——but question in last analysis is one of intention, 118 C 495
——so where legend on draft provided that draft "is for collection only and is not to be treated as a deposit" and the funds "are not to be commingled" with those of bank, *held* relation of agency continued after collection and remittance, 118 C 490
——and instruction to remit proceeds in Chicago, etc., Exchange nil sig., 118 C 498
where draft was paid by check in account with bank and not by cash, receiver contended there was no increment to assets of bank to which drawer's claim could attach, 118 C 490
——*held* that the proceeds of the draft came into hands of receiver and drawer is entitled to reclaim them, 118 C 490
when bank issues depositor check or draft for deposit, presumption is that parties do not intend to change relationship of depositor until check or draft is paid, 118 C 586
——only conditional payment, 118 C 586
——and entries upon books of bank, stamping check or draft as paid, entry on pass book, etc., not evidence of its acceptance in absolute payment, 118 C 586
——and status of depositor not changed to general cerditor, 118 C 586
——so where bank issued draft payable to agent of claimant for withdrawal of portion of savings deposit, 118 C 586
——and when bank on request of claimant issued to it check for portion of deposit in commercial department, 118 C 586
——and when claimant drew its own check upon deposit in defendant bank, 118 C 586
——where in first case agent deposited check in another bank for collection, claimant or agent did not by subsequent course of conduct treat it as received in payment, 118 C 586
where depositor draws check on bank and deposits it in another bank, latter becomes agent for collection, 118 C 586
——and where latter forwards it to Reserve Bank for collection, Reserve Bank becomes subagent, 118 C 586
power of savings department of commercial bank to borrow money on pledge of its assets for purposes of paying its depositors 119 C 115
——fact that by so doing it enables depositors who withdraw before insolvency to obtain more than ratable share of assets no reason to deny power of bank, 119 C 125
——effect of statute de segregation of investments of savings department; title to them in bank, 119 C 115
——relationship between depositors of savings department and assets thereof, not within common-law conception of lien, equitable ownership or trust, 119 C 115
——and therefore bank not forbidden to borrow on pledge of assets because of such relationship, 119 C 115
——fact that banks have for many years been accustomed to borrow money and pledge assets shows right is reasonably appropriate to express powers, 119 C 115
——such right auxiliary to legitimate purpose to pay depositors without endangering security of other deposits, 119 C 115
——and fact that in particular case bank may later become insolvent to disadvantage of nonwithdrawing depositors, nil sig., 119 C 115
——in instant case *held* bank had power to pledge segregated assets of savings department to R. F. C. for loans for purpose of paying depositors in that department, 119 C 115
savings bank or savings department so long as it is going concern must pay any de-

positor on demand; depositor who withdraws money without knowledge that bank is insolvent may hold it, 119 C 124

§ 12. ——Taxation Questions

tax based on capital stock of bank is one upon stockholders rather than corporation, 113 C 661

——hence where bank goes into receivership, tax is only payable from assets finally distributable to shareholders, 113 C 661

tax on corporate franchise computed on basis of savings deposits as of January 1; bank suspended by temporary order December 23, receiver appointed January 6; *held* tax collectable against latter, 113 C 661

——and is on parity as to priority with expenses of receivership, 113 C 661

tax on savings departments of banks and trust companies is tax on franchise, not property; history of legislation, 115 C 313

——tax is on value of franchise on January 1st not during year preceding, 115 C 313

after bank is in receivership neither bank nor receiver is liable to pay tax on franchise assessed after latter's appointment, 115 C 313

——receiver operates under the law not under the franchise, 115 C 313

defendant banks, operating savings departments, were in receivership January 1, 1932; *held* receiver not liable for tax on savings departments assessed as of that date, 115 C 313

temporary receiver of bank appointed and qualified December 24 and made permanent receiver January 21; *held* no tax on deposits in savings department as of January 1, 115 C 364

BARBERS

See Licenses

BAR EXAMINING COMMITTEE

See Attorney at Law § 6

BASTARDY

§ 1. In General
2. Evidence; Pleading

§ 1. In General

order for maintenance must be for a time certain, 1 R 230

husband and wife cannot join in action for support of bastard born before marriage, 1 R 230

when discharge by mother of all demands for maintenance of child is valid, 1 R 319

expenses of child's funeral are not to be allowed as damages, 1 R 345

bastard inherits as brother from one born to same mother, 2 R 281

bond of indemnity must be for sum certain and time certain, 2 R 497

complaint by selectmen may be to justice of town interested, 1 D 278

proper form of judgment, where defendant is found guilty, 1 C 418

judgment of guilty is a finding that defendant is putative father and judgment will support order for maintenance, 2 C 157

allowance for "expenses at the birth" good, 2 C 157

town, not selectmen, proper parties to suit, 2 C 340

suit for maintenance is a civil action, 2 C 360

infant plaintiff may sue by guardian or next friend, 2 C 361

material facts in issue must be found, 3 C 584

meaning of "maintenance" as used in statute, 4 C 566

bastard inherits from mother, 5 C 232, 88 C 270

judgment of "guilty" not informal, if plea is "not guilty," 5 C 426

suit by town; judgment for weekly sum for support, error, 28 C 444

adjournment of court from day to day; bond for appearance and abiding judgment, 32 C 222

bastard has inheritable blood for collateral descent through him, 42 C 500

recognizance on adjournment not forfeited by refusal to give bond on binding over, 51 C 497

——object merely to secure attendance of party and submission to judgment; by statute order is to be in alternative, 51 C 499

where plea in abatement is filed before justice there is no appeal from adverse decision, but practice allows objection to be renewed in higher court, 53 C 524

proceedings under statute are criminal in form, civil in nature, 53 C 525, 54 C 424
justice before whom case is brought can only bind over defendant, 53 C 525
——higher court can only obtain jurisdiction by this proceeding, 53 C 526
failure of justice to commit for lack of bond under statute does not invalidate the binding over, 53 C 526
presence of defendant not necessary in higher court, 53 C 526
statute de appeals from justices does not apply to proceedings under bastardy, 53 C 526
bond of alleged father to town to save it harmless *held* not void for uncertainty as to time or amount, or as against public policy, 54 C 418
——bond construed and *held* not to require a week's notice before suit thereon, 54 C 425
——complaint on such bond *held* not open to various objections raised on demurrer, 54 C 422, 425, 426
nature of bastardy proceedings; promise not to bring, a good consideration, 68 C 47
jurisdiction of Borough Court of Wallingford; claiming for jury list, 73 C 247
arrest by indifferent person, judgment thereafter is void, 85 C 327
proceedings are civil, not criminal, 85 C 327
statutory requirements must be observed, 85 C 327
abatement lies if authority signing writ fails to certify that he administered oath required, 85 C 327
legitimacy by foreign law recognized here is not against public policy, 90 C 164
court determines amount and length of father's contribution, 93 C 318
——order for support till child was fourteen upheld, 93 C 324
refusal to set aside a verdict for plaintiff reviewed and sustained, 98 C 164
presenting complaint to justice to whom it was not addressed as formal or circumstantial defect, 104 C 126
——such defect may be waived, and is waived by stipulation that accused waive examination and consent to being bound over, 104 C 126
judgment for defendant in bastardy action *held* bar to maintenance of action by father for seduction, 104 C 585
bond signed by one holding title of real estate not enforceable against real owner if obligor not misled or if he acted improperly or negligently, 105 C 378
proper to require bond for appearance at continuance in justice court as well as on bind over, 105 C 386
jurisdiction of justice of the peace defined, 105 C 386
bond for appearance in bastardy action before justice with stipulation that it be extended to "final disposition" of case, *held* to cover judgment rendered by Court of Common Pleas, 105 C 386
proceedings are civil not criminal in nature and general rules of civil procedure are applicable to them, 116 C 704
end of proceedings is redress of civil injury; purpose to compel father to pay certain expenses of birth, to secure child's maintenance in aid of mother, and to protect town, 116 C 704
plaintiff at time of birth was domiciled in State; fact that child was begotten in Poland not of consequence, 116 C 704
proceedings are civil and not criminal in nature, and rules respecting civil actions are applicable to them, 118 C 304
——arrest and detention of body are for security and not to give jurisdiction, 118 C 304
——hence plea in abatement on ground that service made by leaving complaint at usual place of abode without arrest of body, properly overruled, 118 C 304
surety for appearance in bastardy action is not liable on failure to apprehend accused on body execution; has no duty of seeing that accused conform to judgment by making required payments, 128 C 313
——body execution is merely means to collect, as distinguished from mittimus for committal to jail if accused does not comply with court's order to file bond for support, 128 C 313
——if accused not present when judgment given and fails to give bond for support, mittimus may issue, 128 C 314
——if he is not forthcoming for service of that mittimus, surety becomes liable, 128 C 314
——where no mittimus was issued, condition of recognizance not broken, 128 C 314
town chargeable with child's support not necessary party to bastardy action by mother, 128 C 314
——bond should provide indemnity to town for expense of maintenance; town could sue on it as third party beneficiary, 128 C 314

§ 2. Evidence; Pleading

action by selectmen; deposition of mother taken before suit, and without notice, inadmissible, though mother has since died, 1 R 154
averment of birth of child is necessary, 1 R 345
woman cannot support action unless put to discovery at travail, 2 R 492
——overruled, 43 C 484
on complaint by selectmen mother need not be examined at travail, but may be compelled to testify, 1 D 278

neglect of mother to sue is a condition precedent to suit by town, 5 C 422, 424
——what averment of neglect by mother is necessary, 5 C 424
judgment of "guilty" not informal, if plea is "not guilty," 5 C 426
oath of one selectman to complaint by town sufficient, 6 C 44
town need not use mother as a witness, 6 C 44
complaint and warrant the proper process by town against putative father for child's support, 7 C 289
admission of defendant to intercourse more than one year before child's birth as showing habit of intercourse with the mother, 28 C 309
——defendant must submit to cross-examination, 28 C 309
discovery of mother at time of travail not a prerequisite to her recovery, 43 C 484
prima facie case within statute; statute de nonsuit, inapplicable, 43 C 487
when not essential to prove discovery of mother in time of travail; admission in corroboration of complainant's testimony, 47 C 186
when constant accusation of defendant made to another admissible, 47 C 187
omission to aver that prosecutrix is a minor is a defect in a complaint under statute; may be taken advantage of under seasonable plea, but too late after trial on general issue, 58 C 287
declarations of third person that he was father of child *held* inadmissible, though defendant might in exculpation prove the fact of such parentage, 58 C 287
——doctrine of coconspirators de such declarations *held* not to apply, 58 C 288
——fact that such declarations were made so early that they would prove guilty knowledge does not change rule, 58 C 290
defendant may show that he paid small sum to prosecutrix for debt of his wife, to rebut presumption that payment was in recognition of their guilty relations, 58 C 285
declarations of prosecutrix to her mother as to circumstances of begetting admissible as corroboration, 58 C 290
probability that defendant would not commit fornication how far a factor in case, 60 C 218
evidence; previous acts of intercourse; promise of marriage; declarations of mother that defendant was father of child; charge as to time when intercourse must have taken place; expenses of lying in and burial, 67 C 339
evidence; resemblance of child; declarations of mother; corroboration of her testimony, 78 C 65, 79 C 97
requirement of old law that mother name father "in the time of her travail," 81 C 7
marriage record, although not full or complete, admissible as an original entry to prove legitimacy of one who claims to be an heir-at-law of decedent, 93 C 38
——original entry of applicant's baptism likewise admissible, 93 C 38
when declaration of complainant as to paternity of child admissible, 93 C 317
present statute more liberal as to mother's statements, 93 C 318
birth certificate naming father admissible, when, 93 C 318
that physician's certificate was obtained is presumed; not necessary to plead it, 93 C 318
evidence of unchasity of plaintiff six years before birth of child *held* too remote, 98 C 164
constancy of accusation; essentials of prima facie case; burden of defendant to disprove charge by evidence other than his own, 108 C 671
evidence *held* to show conclusively the defendant's guilt, 108 C 671
statute merely makes constance of accusation competent evidence, constituting prima facie case; conclusion that prima facie case was rebutted upheld, 114 C 711
important fact is consistency of mother's declaration from first to last of paternity of child; number of accusations and period they cover go merely to weight, 116 C 704
plaintiff accused defendant of being father of child to him and to her father and made same accusation while she was in travail; *held* finding of continuity and constancy of accusation justified, 116 C 704

BATHING RESORTS

See Negligence § 5(3)

BEACH

See Deeds § 5; Waters § 8; Words and Phrases

BENEFICIARY ASSOCIATIONS

§ 1. In General
2. Membership
3. Benefits and Beneficiaries

See also Corporations; Insurance; Labor Unions; Voluntary Associations

§ 1. In General

contract for assessment life insurance, construed, 58 C 308, 315

——liability of officers of such association on contract where unincorporated, 58 C 312

where a decision of a grand master is made final by the rules, evidence will not be received on that point, 58 C 558

where beneficiary association issues certificates to members and forms fund by assessment on constituent lodges, though part of fund retained by lodges, contract *held* to be that of association, 64 C 170

——remedy where association disables itself to perform its contracts, 64 C 170

——retaining funds in this State to protect members here, 64 C 170

——distinction between such association and insurance company, 64 C 170

——foreign association need not have authority from insurance commissioner to do business here, 64 C 170

certain association *held* to be against public policy, 64 C 208

association may give note to compromise suit against it, 70 C 634

proof of adoption of amendment to by-laws by evidence outside record, 71 C 719

construction of statute exempting benefits of societies "having a ritualistic form of work," 76 C 132

action by Grand Lodge of Connecticut, A. O. U. W., against that of Massachusetts as to insurance funds, 81 C 189

——rights in funds, 81 C 189

——constitution and organic law of order, 81 C 202

——power of supreme lodge to constitute new grand lodge, 81 C 189

——effect of incorporation of grand lodge, or its absence, 81 C 189

——that no authority in defendant to pay over funds cannot defeat action, 81 C 189

——insurance funds in nature of trust funds; rights in funds are property rights, 81 C 205

power of equity over trust funds, 82 C 93

recognition of course pursued by a lodge prevents questioning it later, 83 C 242

if a separation conforms with society's laws, there is no secession, 83 C 242

when a lodge is not supreme and is accountable for moneys collected, 83 C 242

no accounting if separation by mere will and act of outgoing members, 83 C 242

understanding of parties governs agreement to distribute assets, 83 C 242

to appropriate surplus paid by another lodge, some benefit should be conferred, 83 C 242

funds from a per capita tax should be distributed on per capita basis, 83 C 243

previous settlements with other lodges no standard for present one, 83 C 243

agreement as to value of property removes it from question, 83 C 243

cannot use distinctive name of another society, 83 C 679

when fund for special purpose can be changed: assessments increased, 84 C 98

courts hesitate to interfere with management of, 84 C 98

irregularity in adopting by-law acquiesced in cannot be taken advantage of, 84 C 98

effect of knowledge by one under no duty to inquire, 84 C 356

general officer is not the corporation in dealing with others, 84 C 357

collection of assessment, without inquiry de by-laws' violation, no waiver of by-laws, 84 C 357

how far law of State where association exists enters into it, 87 C 644

money of local circle's trust fund protected by equity, 88 C 677

parent society can invoke equity to protect funds of local circles, 88 C 677

supreme authority in convention of officers and delegates, 89 C 616

local branches not able to bind association by voluntary acts, 89 C 616

local branch cannot merge into corporation without consent of supreme council, 89 C 616

construction of constitution of national organization not shown by usage of a local union, 90 C 427

by interpleading, society acknowledges indebtedness, 91 C 115

what benevolent societies are exempt from succession tax, 95 C 50

notice of special meeting must indicate business to be transacted, 96 C 57

test of procedure is not formal rules but essential fairness and justice, 96 C 58

where laws of order provide for appeals within the order, resort not to be had to courts until such laws exhausted, 96 C 198, 270

——this does not apply to action by lodge without its jurisdiction, determined as is jurisdiction of inferior courts, 96 C 198
——as where, under power to reprimand, suspend for definite term, expel or fine not over $5, lodge suspends members until they pay certain charges, 96 C 198
——right of appeal from "questions arising in lodges" *held* to include appeal from order of lodge suspending member, 96 C 198
pending appeal within order, court may preserve status quo by injunction, 96 C 265
——may run against nonresident officers who appear and defend, 96 C 266
——effect of injunction secured to protect property rights here where order is domiciled in another State, 96 C 265
where, under laws of order, a local lodge is suspended, and thereafter the supreme officer of grand lodge recognizes certain individuals as constituting local lodge, injunction lies to prevent formation of new lodge and transfer of property to it, pending the appeal allowed by the laws, 96 C 266
——but, as those laws made the order of suspension valid till reversed on appeal, the defendants could not be compelled to recognize suspended lodge as in good standing, 96 C 266
effect of revocation of charter of local lodge by grand lodge, 97 C 235
——unless, as matter of contract, some other disposition is provided, personal property vests in members of local lodge as a voluntary association, 97 C 235
——provision disposing of property in case of lodge "lapsing" not applicable to revocation of charter, 97 C 235
——nor does obligation of trustees of local lodge to account for funds to grand lodge vest title to property in it, 97 C 236

§ 2. Membership

where usage exists to refer question of membership to officers, a contract of insurance is held to be made in view of this, 58 C 556
——the contract to be construed as though such reference was provided in terms, 58 C 557
decisions of beneficiary associations admitting, disciplining, suspending and expelling members are quasi judicial, 58 C 557
——courts will only interfere to ascertain whether proceedings were pursuant to the rules of the association, were in good faith, and not in violation of the laws of the land, 58 C 557
——*held* to be within the jurisdiction of masonic officers, 58 C 557
——decision of grand master final, 58 C 557
effect of reversal of suspension *held* to restore membership from date of suspension; it made no difference that reversal was after death of member, 58 C 558
members of beneficiary association cannot maintain an action at law against it under statute, 61 C 227
effect of agreement to be bound by an amendment to by-laws, 71 C 719
rules of association enter into member's contract; irregularity in expulsion cured by acquiescence; effect of reinstatement, 76 C 52
right to amend by-laws reserved; reasonable amendment binds those already members; making employment as switchman extra hazardous, 77 C 58
by-law defining member in good standing, 78 C 40
requirement that all means of redress in the order be exhausted before appeal to courts upheld, 78 C 43
contract of member is determined by general laws, charter, and by-laws; custom cannot change it, 79 C 218, 82 C 315, 84 C 96, 87 C 644
ipso facto suspension by nonpayment of dues; effect of receiving back dues; waiver of breach; restricted power of general officers, 79 C 218
allegations necessary for member to have accounting, 82 C 91
contract of member construed by law of incorporating State, 82 C 315
when constitution and by-laws are contract with member, 84 C 96
reasonable to require that member shall not become liquor dealer, 84 C 357
members are supposed to be conversant with by-laws, 84 C 366
contract is made where final act to make it effective is performed, 87 C 644
misrepresentation of age prevents one becoming member, 89 C 249
subsequent reduction of age limit does not waive a disqualification, 89 C 249
misrepresenting age not unreasonable grounds for forfeiting dues, 89 C 249
constitution and by-laws construed most favorably to member, 90 C 427, 104 C 157
contract rights of members not changed by parol evidence of custom, 90 C 427
expulsion of member; requisite procedure, 96 C 50
——attempt to disrupt society not properly charged in allegation that member organized another society, 96 C 50
——by-law providing that council consider charges in secret invalid unless interpreted to mean its consideration after proper hearing open to members, 96 C 50
member's lack of notice of meeting waived by attendance without protest, 96 C 50
——so lack of notice of business to be transacted at special meeting, 96 C 58

illegal action in expelling member at unlawful meeting may be so ratified at lawful meeting as to make society liable in damages, not as to make action valid, 96 C 50
by-law forbidding members to go to court upon wrongful interpretation of by-laws, but making interpretation made by a committee conclusive, invalid, 96 C 51
——and not applicable to case of expelled member who had no knowledge that his expulsion was based upon such an interpretation, 96 C 51
appeal where, under power to reprimand, suspend for definite term, expel or fine not over $5, lodge suspends members until they pay certain charges, 96 C 198
——right of appeal from "questions arising in lodges" includes appeal from order of lodge suspending member, 96 C 198
member, expelled after trial under laws of society, cannot retry facts in suit for damages for expulsion, 97 C 509
——particular by-law of order cannot be attacked unless issue raised by pleadings, 97 C 509
by-law requiring member "wronged in any way" to appeal to society's tribunal before resort to courts construed, and upheld, 97 C 509
——duty of member to exhaust remedies in society before appealing to courts, 97 C 509
formal requirements of by-laws as to reinstatement of members may be waived by established custom, 101 C 648
——reinstating member suspended for nonpayment of dues simply upon his paying up, 101 C 648
——member cannot claim agent had ostensible authority to do forbidden act just because he did it, 101 C 651
——association cannot itself reinstate member arbitrarily and contrary to its constitution, 101 C 651
effect of custom to disregard by-laws established by local branch of central organization, 101 C 652
——association cannot make discriminatory contract in violation of constitutional requirements of equality of members, 101 C 657
——membership in such case never lost, hence of no consequence that card not stamped reinstated until after member's death, 101 C 658
——whether payment made before member's death is question for jury, 101 C 657
if grand lodge maintains death benefit fund from dues of members of local lodges, and itself issues certificates, terms of certificate and by-laws of grand lodge determine rights, 104 C 157
——if by-laws of subordinate lodge are inconsistent those of grand lodge prevail, 104 C 157
provision that member "who does not pay" or "fails to pay" dues for a certain period will be suspended implies that he may retain his rights by paying, 104 C 157
——effect of provision that member has ninety days grace and if he pays within that period rights will be unaffected except by deduction of amount due, 104 C 157
——meaning of "period of grace," 104 C 157
——effect of payment within period of grace where secretary accepts it and tells member to apply for reinstatement, both believing this necessary, 104 C 157
a benefit association is charged with notice of contents of its record and with knowledge of officers gained in scope of authority, 104 C 539
——if association carries name of person as member and collects dues until his death, in absence of fraud, formal defects in membership are waived, 104 C 539
unless by-laws provide method for settlement of claim, rule that procedure in society must first be exhausted not applicable, 104 C 539
knowledge of by-laws as imputed to member, 104 C 539
vote as to suspension of members returning to old country for nonpayment of dues *held* abrogated by adoption of complete set of new by-laws, 111 C 677
——if in force, *held* that the suspension would be controlled by the terms of the vote and would not be automatic, 111 C 677
constitution provided suspension when three months' dues were in arrears; default *held* not waived by issuance of working card for two months during which member was in default, 114 C 309
time when dues are payable, not month for which they are paid, determines whether member is in arrears, 114 C 309
provision for suspension when stated amount of dues is unpaid automatically brings about suspension, 114 C 309

§ 3. Benefits and Beneficiaries

endowment payable on death of member in good standing, that is, not indebted to order; *held* right of beneficiary depended on not being indebted, 62 C 227
——not upon other provisions for suspension and reinstatement, 62 C 227
——where member was indebted and suspended by order and his beneficiary paid amount due shortly before death, *held* entitled to endowment, 62 C 225
——though payment did not reinstate member, 62 C 227

contract of Massachusetts association with person there domiciled construed by Massachusetts law; "heir-at-law" held to include widow, 64 C 240
when money is due, it becomes property of beneficiary, 64 C 250
change of beneficiary; trust implied from payment of premiums, 70 C 537
provisions as to beneficiary held to relate to time of death; father designated by unmarried man excluded on death after marriage, 70 C 545
provisions of will cannot change beneficiary rights fixed by by-laws, 71 C 719
appointment of beneficiary revocable, 74 C 468
provision of charter requiring payment to "immediate family" construed, 80 C 212
by-law providing suspension for nonpayment of dues for sick benefits, and another prohibiting suspension during illness do not cut off sick benefits because of nonpayment beginning during illness; provision as to, and waiver of, notice of illness, 81 C 124
benefit payable to relative not payable to son-in-law, 82 C 315
contract not vitiated by designating one ineligible, 82 C 315
beneficiary has no vested interest during life of member, 82 C 315
beneficiary paying dues by mistake in violation of statute cannot recover, 82 C 315
claimant with no right to benefit cannot complain of award, 82 C 315
beneficiaries restricted to those named in the statute, 82 C 318
right to repeal and regulate does not permit divesting vested rights, 84 C 97
by statute death benefits paid from surplus and reserve, 84 C 97
surplus and reserve is a trust fund, 84 C 97
benefit funds belong to certificate holders during life of fund; apportioned only when no longer any need of them, 84 C 97
when merging of benefit funds allowed, 84 C 97
beneficiary must prove decedent's ignorance of by-laws, 84 C 357
estate of beneficiary predeceasing insured has no claim, 87 C 645
power to designate beneficiary and failure to do so does not give insured property interest in fund, 87 C 645, 90 C 426
cannot designate estate as beneficiary unless society allows it, 87 C 645
member during life can designate or change beneficiary, when, 90 C 426
right to designate member not part of one's estate, 90 C 426
beneficiary can be named any time, 90 C 427
benefits are payable out of any source that accrues by virtue of membership, 90 C 427
notice of designated beneficiary to association, 90 C 427
designation of beneficiary sufficient if given before payment, 90 C 427
if by-laws permit change, beneficiary has no vested interest in benefit, 90 C 511
representative of beneficiary can collect only if he dies after member, 90 C 511
under by-law check made to representative of deceased clansman, 90 C 511
under by-law widow of deceased had no interest, 90 C 511
provision for payment to beneficiary or his legal representative construed, 90 C 514
widow of member *held* to have no right to benefit though no beneficiary was designated, but on death his administratrix was entitled to the fund, 90 C 516
new or substituted beneficiary must show all rules complied with, 91 C 115
benefits are vested on death of insured, 91 C 115
beneficiary in a certificate providing for change of beneficiary has only a mere expectancy, 92 C 488
designation of beneficiaries must be within classes prescribed by, and must conform to, the statute, 117 C 48
where classes of beneficiaries are specified by statute, the persons so indicated will take where there has been no designation or a void designation unless otherwise provided by statute or by-law, 117 C 48
K designated estate as beneficiary though statute limited designation to certain relatives and made no provision for designation of estate; *held* designation void and presented same situation as if none had been made, 117 C 48
——proper recipients are persons next of kin within classes of relatives designated by statute or by-law, that is, brother and nieces in instant case, 117 C 48
——rule applied consistent with principle that member has no property rights in fund, but only power of appointing beneficiary, 117 C 53
——and accords with holding that where there is failure of beneficiaries benefit will go to member's heirs, 117 C 53
——disposition also satisfies equitable considerations, 117 C 54

BENEFITS AND DAMAGES

See Eminent Domain §§ 4, 10

BETTERMENTS

See Contracts § 42; Ejectment

BICYCLE

See Automobile § 4

BILL OF EXCEPTIONS

See Appeal to the Supreme Court § 34; Writ of Error

BILLS AND NOTES

§ 1. In General
2. Form and Essentials; Interpretation and Effect
3. Consideration
4. Negotiation and Transfer
5. Rights of Holder Generally
6. Holder in Due Course; Bona Fide Holder for Value
7. ——What Constitutes; Notice of Defect; Bad Faith
8. ——Rights of; Protection Afforded Such Holder
9. Rights and Liabilities of Parties Generally
10. ——Maker
11. ——Indorser
12. ——Accommodation Parties
13. ——Guarantor
14. Defenses: Alteration of Instrument, Want or Failure of Consideration, Forgery, Fraud, Illegality, etc.
15. Maturity
16. Presentment; Demand; Acceptance
17. Notice of Dishonor
18. Payment and Discharge
19. Bills of Exchange; Drafts; Orders; Checks
20. Actions
21. ——In General
22. ——Pleading
23. ——Evidence
(1) Parol Evidence to Affect Instrument
(2) Miscellaneous

See also Banks and Banking; Bills of Lading; Bonds § 5; Guaranty; Mortgages; Suretyship; Usury; Warehousemen

§ 1. In General

notes were specialties and nonnegotiable until 1811, 2 R 109, 12 C 237

——otherwise, if payable at bank or to insurance company, 2 R 109, 12 C 237

bills of exchange were negotiable in 1796, 2 R 523

whether bill or note operates as payment, quaere, 1 C 416

note given as escrow must be delivered pursuant to conditions, 4 C 235

holder's rights not affected by cutting bank bill in two, for safe transmission, 5 C 111
——holder of divided bill must show what, to recover on one part, 5 C 112
parts of bank bill not separately negotiable, 5 C 112
——notice by bank, de its nonliability on separate parts, affects only those who actually have knowledge, 5 C 112
a note is evidence of liability arising out of contract, 5 C 334
payment by payee to assignee revests title in payee, without reassignment, 6 C 339
no extinguishment of the debt, while unpaid, unless expressly received as payment, 8 C 473, 9 C 23, 10 C 478
a nonnegotiable note is not a specialty, 9 C 242
note becomes absolute when condition therein is waived, 10 C 61
negotiable paper indorsed in blank and not matured, not subject to foreign attachment, 13 C 104
vendor of forged note liable for price received, 26 C 31
a due bill is not a "promissory note not negotiable" within Statute of Limitations, 40 C 349
agent authorized to make mortgage loan in principal's name is owner of mortgage note payable to bearer, 51 C 219
——principal's ignorance of existence of note and mortgage does not preclude such ownership, 51 C 219
in nontrading partnership, individual partners have not the same implied authority to bind by notes in firm name, 53 C 53
——presumption favors want of authority, 53 C 53
a company has power to deal in negotiable paper in the line of its business, 54 C 387
definition of a promissory note, 60 C 407
does not extinguish debt or obligation for which given, 72 C 589, 81 C 502, 87 C 316
rights of parties determined by law in effect when note made or indorsed, 73 C 103
renewal note may be good, though original was not, 73 C 626
accepting note as agreement to forbear action, 75 C 91
Negotiable Instruments Act codifies common law, 82 C 333, 86 C 511
——history of act; not applicable to nonnegotiable instruments, 86 C 514
death of maker gives no greater rights against executor, 82 C 504
giving of note made unliquidated claim certain, 82 C 600
implied power of corporation to become party to, 85 C 147
in giving up a forged note, holder parts with nothing of value, 89 C 592
notes as collateral can be enforced to extent of debt only, 91 C 553
law knows no "renewed negotiable note," 92 C 707
note presumed not to be taken in payment, 93 C 445
duly executed note and mortgage is presumed valid, 95 C 102
effect of failure to stamp as required by federal statutes, 95 C 563
as to what constitutes conversion of note and damages, 96 C 233
Negotiable Instruments Law to be liberally construed to effect uniformity, 98 C 782
——cases previous to its enactment not controlling, 98 C 782
bank receiving commercial paper for presentment, acceptance, and collection, governed by laws, customs and usages of its locality, 105 C 33
statute purporting to validate negotiability of notes providing for payment of taxes is unconstitutional as impairing the obligation of contracts, 111 C 65
——applies to subsequent notes only, 111 C 65
where case was tried on theory that note was negotiable, court decided case on that theory, though it was in fact nonnegotiable, 111 C 569
a bill or note is not a debt, but only primary evidence of it, 114 C 6
rule that note or check is not to be regarded as payment of debt, rests upon presumed intention, 118 C 593
——basis is that one simple executory contract does not extinguish another, 118 C 593
——presumption is that it was intended by the parties as no more than conditional payment, 118 C 595
a debt due on a negotiable promissory note is as much liable to attachment as any other debt, 122 C 166
——but when note is negotiated before it comes due it will defeat the attachment, 122 C 166
when at time of fraudulent conveyance negotiable notes are outstanding, their later renewal does not create independent debt but evidences continuation of same debt, 122 C 180
note given on condition that it would only be enforced if maker failed to give support to drawee if she ever needed it, never became legal obligation where drawee died without ever needing or asking support, 123 C 465
authority of agent to accept payment of note which he has taken in part payment of article sold, 124 C 105
cardinal principle in interpretation of uniform laws that courts should make their decisions harmonize, 126 C 39

§ 2. Form and Essentials; Interpretation and Effect

obligation to heirs of a living person is valid under such a description, 1 R 181
note for goods on day certain or for money is a money note if goods be not delivered, 2 R 190
when no time is expressed, note is due on demand, 1 C 405, 10 C 485
note payable "to order of A," is note payable to A himself, 4 C 246
"we A and B as principal and C and D as surety," how construed, 4 C 389, 11 C 221
note payable to particular person and not to order or bearer, is nonnegotiable, 10 C 207
note for blank amount may be filled up by holder, how, 13 C 279
"on demand after my decease," a valid note, not testamentary, 19 C 7
what certainty as to time of payment is required, 31 C 534
note given by Shakers; signed "Zelotes Terry," 35 C 131
——parol admissible, that such was business name of society, 35 C 132
——one signed "Zelotes Terry, Trustee," may be shown to be note of society, 35 C 132
to constitute a note, the promise must be express, 40 C 353
where several sign a note without qualification, all are makers, 40 C 552
note reading "I promise, etc.," signed by several is a joint and several note, 40 C 552, 61 C 47
——unless contradicted by face of note, 40 C 552
one cannot become a joint maker, after execution and delivery, 40 C 553
——unless in pursuance of previous arrangement, 40 C 553
——the subsequent undertaking is collateral, 40 C 553
note described in mortgage condition as "bearing interest at 6 per cent per annum;" *held* the "per annum" probably was intended to mean annual payment of interest, 54 C 24
a note to be negotiable must be payable to a person or his order or to bearer, 56 C 148
——§ 1858 has not changed the law, see Revision 1866, p 599, § 1, Revision 1875, p 343, § 1, 56 C 148
pass book of saving bank in connection with order is not negotiable, 60 C 300
law declares negotiability of instruments; contract of parties cannot do so, 60 C 311
instrument construed and *held* not to be a negotiable note, 60 C 402
——rather a conditional sale or an executory contract for a sale, 60 C 407
——promise must be absolute, 60 C 407
negotiable note may contain language not required to express vital essentials of such an instrument, and still retain its character as negotiable paper, 60 C 408
trust certificates construed and *held* quasi-negotiable, 60 C 554
joint and several signed by a partnership, *held* to be the several note of each partner, 61 C 47
effect of provision for semi-annual interest, 71 C 39
order to pay sum or "what may be due" not negotiable, 73 C 568
under prior statute, demand note was overdue after four months, 75 C 431
agreement that loan represented by note shall be a continuing one, valid, 78 C 319
negotiable coupon bonds payable to bearer are within act, 80 C 60, 82 C 333
seal does not affect negotiability, 81 C 671
effect of provision that it is payable "on demand after date" and is to bear interest, 84 C 55
paper directing third party to pay plaintiff, not a note, 86 C 511
note "I promise to pay" signed by two is joint and several, 90 C 252
order for payment to particular person to be charged to account of drawer is nonnegotiable, 93 C 391
a certificate of stock is not a negotiable instrument, 94 C 607
all words upon any part of note to be considered in determining who is bound, 98 C 782
statute de signature indicating representative capacity; admissibility of parol evidence, 98 C 782
statute has no application to any writing not a negotiable instrument, 101 C 168, 105 C 639
order to pay builder certain sum from proceeds of mortgage loan was a nonnegotiable bill of exchange; terms not variable by parol evidence, 102 C 558
——provision that it be due "when building complete and accepted," construed, 102 C 558
mortgage note for sum certain plus taxes to be assessed against holder *held* nonnegotiable, 104 C 696
not negotiable, unless it contains unconditional promise to pay sum certain in money, 104 C 700
mere adding word "seal" to promissory note does not make it an instrument under seal, 110 C 413
——hence not within Statute of Limitations as to sealed instruments, 110 C 413
——seal does not impair negotiability and hence provision as to promissory notes not negotiable would not apply, 110 C 413
meaning of provision in law that inclusion of costs of collection or attorney's fee will not destroy negotiability, 110 C 438
——cost of collecting debt by enforcing mortgage securing it may be included, 110 C 438

mortgage note stipulating for payment of taxes, assessments and insurance nonnegotiable; retrospective act could not affect, 111 C 65
provision in note executed before act of 1927 providing for payment of taxes makes it nonnegotiable, 116 C 418
——that act does not affect notes executed prior to its passage, 116 C 418
note without apt words of negotiability was nonnegotiable; also because of provision for payment by maker of interest, assessments and taxes upon mortgaged property, 116 C 669
instrument simply stating balance due and that creditor agrees to accept payments twice a month and signed by debtor *held* not promissory note, nonnegotiable, within seventeen year Statute of Limitations, 124 C 293
statement upon face of trade acceptance in corner in small type *held* not to render instrument nonnegotiable, 126 C 37

§ 3. Consideration

See also §§ 6, 14, infra
note on illegal consideration is voidable between original parties, 1 R 95
a total fraud in consideration renders bill or note void, 1 C 329, 5 C 528
indorser's promise, after he is discharged by holder's laches, is void for want of consideration, 4 C 125
partial failure of consideration may be shown as between original parties, 6 C 521
want of consideration may be shown as against purchaser of overdue note, 6 C 521
want of consideration may be shown between the original parties, 6 C 521, 11 C 390, 19 C 17
——subsequent bona fide holder not affected, 6 C 521, 11 C 388, 18 C 443
——may be shown between maker and indorsee who is not holder for value, 6 C 526
——such holder is in privity with maker, 6 C 526
note does not import a consideration unless expressed for "value received," 8 C 6
want of consideration avoids nonnegotiable note, 9 C 242
negotiable note from its very nature imports a consideration, 9 C 549, 19 C 7
words "for value received," raise rebuttable presumption of legal consideration, 10 C 484
note given for pre-existing debt is on valuable consideration, 11 C 388, 29 C 475
——accommodation indorser is liable on such note, 29 C 475
want of consideration may be shown as against one having notice of restricted nature of indorsement, 11 C 390
——as against original owner by whose mistake or negligence one of two innocent persons must suffer, 11 C 392
consideration of, may be denied in whole or in part, 12 C 237
fraud or want of consideration renders note void, 12 C 569
if consideration be partly valid, in absence of fraud, the note is not void, 15 C 512
in scire facias, maker of note given in consideration of note decreed void, not liable because equitably entitled to set-off, 16 C 215
——or because of failure of consideration, 16 C 217
want of consideration between original parties to note, is no defense to action by bona fide indorsee, 18 C 443
nonnegotiable notes not purporting to be for value received, do not imply, 19 C 7
——action not sustainable without proof of consideration, 19 C 7
——but a promissory note in form negotiable, though not negotiated, imports consideration, 19 C 7
——as well between maker and payee as between maker and indorsee, 19 C 7
want of consideration in note, bars a recovery as between original parties, 23 C 68
note taken as security for or payment of past indebtedness, valid, 37 C 205
——meaning of "regular course of business," 37 C 212
written order for chattel is open to all equitable defenses against assignee, 44 C 267
fraud or want of consideration no defense against bona fide holder of note who took it before it came due without notice, 46 C 435
moral obligation *held* not sufficient consideration for subsequent promise, 52 C 464
no new consideration essential between drawee and payee where latter indorses before acceptance, 54 C 381
given for services rendered in sickness *held* valid, 57 C 565
——though note was to be returned if maker got well, 57 C 565
given to secure withdrawal of suit and release from arrest of maker's son, *held* a good consideration, 61 C 50
——independently of any question as to son's liability in suit, 61 C 50
——not necessary that maker should have had an interest in the suit, 61 C 50
"value received" is sufficient consideration in absence of proof to the contrary, 61 C 50
joint and several note by husband and wife as advancement to daughter; afterwards husband left property to wife by will she agreeing to pay note, *held* gift of property is sufficient consideration, 61 C 204
——wife took property charged with trust of paying whatever was due on note, 61 C 209
——where original note was partially paid and the new note, substituted for balance, pro-

vided for payment of interest, wife *held* bound to pay interest, 61 C 205
compromise of pending action good consideration, 70 C 637, 76 C 126
——agreement to forbear a right, as of recall of loan; actual forbearance and taking of note as evidence of such agreement, 75 C 91
valuable consideration, if taken as collateral security for a pre-existing debt not due, 72 C 576
negotiable instrument as importing a consideration, 73 C 572
services in organizing corporation will support note made by it, 73 C 626
promise by husband's creditors to forbear suit, made at request of wife, is consideration for her note, 75 C 91, 93 C 355
where goods are sold f. o. b. in another State, payment to be made by acceptance of draft, draft is on valid consideration, though provisions of our statutes as to marking goods not fulfilled, 80 C 509
note given for sale of liquors to corporation where license intended for it was issued to a member or officer is void, 81 C 145
seal does not affect defense of want of consideration, 81 C 671
note for work abandoned is without consideration, 82 C 244
transfer of note of third person in payment for stock, under agreement that seller shall collect it, and remit any balance is a good consideration, 82 C 585
undertaking to furnish one support is good consideration, 82 C 606
——discharge of unliquidated liability good consideration, 82 C 600
check payable to order is prima facie for valuable consideration, 83 C 520
——check imports consideration, 83 C 528, 85 C 155, 105 C 79
undertaking to furnish automobile, sufficient consideration, 83 C 520
agreement to deliver goods sufficient to support check given in part payment, 83 C 528, 105 C 79
consideration presumed in case of check, 83 C 528
indorsement presumed to be for a consideration, 85 C 148
surrender of forged note is not a good consideration, 89 C 592
lack of, not a defense against bona fide pledgee to amount of pledge, 91 C 553
promise of husband's creditor to forbear suit, made to wife at her request, sufficient consideration for her note for amount of debt, 93 C 359
furnishing of further supplies to building contractor, as consideration for acceptance of order drawn on owner by him, for supplies already furnished, 93 C 401
consideration where indorser, after his failure to receive notice of dishonor, promises to pay note, 94 C 497
pre-existing debt as a consideration, 94 C 607
failure of consideration in whole or part is good defense, 95 C 248
there is a consideration if debtor does or promises to do something further or different from what he was bound to do, 100 C 429
promise to extend time of payment must be supported by consideration, 100 C 429
promise by maker of note to apply proceeds to payment of debt due indorser, is no consideration for the indorsement, 102 C 34
burden of proof de lack of consideration on defendant, when, 102 C 624
when consideration for note is sale of illegal saloon business, it is void; but not if place is merely "reputed to be" used illegally, 104 C 703
inadequacy of consideration; when it will justify finding that holder did not take instrument in good faith, 106 C 147
where note given for stock subscription to corporation being organized, and it is not organized, conditional subscription becomes unenforceable for failure of consideration, 107 C 216
———note is also unenforceable, 107 C 216
giving of note by wife to avoid being harassed to pay note of husband without any promise of forbearance does not constitute consideration, 110 C 174
——effect of retention of original note by creditor, 110 C 174
——actual forbearance is evidence of agreement to forbear, but not conclusive, 110 C 174
defense that notes were given without consideration for accommodation of plaintiff found proven, 114 C 722
surrender of antecedent debt good consideration for receipt of note, 118 C 118
inadequacy of consideration may, in connection with suspicious circumstances, justify finding of bad faith, 120 C 426
money "he was supposed to give her later," where no promise on husband's part to give it, no valid consideration for note, 128 C 243
there being no legal obligation on part of wife to pay for services and expenditures on her property by husband, they were not valid consideration for note, 128 C 247
where defendants gave cash and note in settlement of mortgage upon representation of plaintiff that much larger sum was due on it than was actually due, there was substantial failure of consideration, 129 C 194

§ 4. Negotiation and Transfer

delivery of note on condition vests no title until performance, 1 C 496

to be an indorser, one must have been promisee or indorsee, 6 C 317
a nonnegotiable note may be assigned, 7 C 406
——defeasance by payee, for fraudulent purposes, no bar to suit on note, 7 C 407
negotiability is unrestricted during days of grace, 8 C 505
delivery of, inferable where real payee holds note made by mistake to stranger, with latter's assent, 9 C 546
assignment of note carries with it the debt, 14 C 130
indorsement by payee, by name of partnership of which he was member, transfers title, 16 C 445
no title to note passes without a delivery, 17 C 520, 24 C 333
effect of indorsement in blank and delivery, after dishonor, for collection, 29 C 347
indorsement of note given by owner to builder, does not pass builder's lien also, 41 C 522
——especially in absence of attempt or intent so to do, 41 C 524
negotiable note transferred without indorsement of payee, stands on same footing as nonnegotiable note, 47 C 418
delivery of an indorsed note as collateral security, does not divest pledgor of his equitable interest, 50 C 597
——pledgor may foreclose mortgage securing collateral note, 50 C 597
——a court of equity would not dismiss suit, but would require holder of note to be made party before decree, 50 C 597
——where note is returned to pledgor, holder need not be made a party, 50 C 598
transfer of note carries with it in equity, the mortgage security, 51 C 217
——though notes transferred to two persons and mortgage to one only, 51 C 217
a note delivered on condition cannot be collected by payee of maker until conditions are fulfilled, 54 C 250
——parol evidence of the terms of the delivery are admissible, 54 C 250
possession of note by payee is prima facie evidence of delivery, 54 C 251
delivery may be on condition, 71 C 177, 742, 76 C 126, 79 C 626
effect of two indorsements by same person, one "without recourse," 71 C 418
——of continuing guaranty made to avoid necessity of indorsing each of long series of notes, 67 C 155
letter accompanying note *held* not to constitute condition of delivery; agreement on delivery as to manner of using or holding note gives action for damages, 76 C 126, 79 C 626
——inference of indorsement drawn from evidence that note was left with holder and credited on account, 76 C 126
effect of indorsement "for collection and remittance," 76 C 126, 87 C 248, 88 C 186
bank may strike out its indorsement "for collection" on return of note unpaid, 76 C 126
meaning of transfer, 81 C 667
distinction between special and blank indorsement, 81 C 667
delivery in escrow, to agent of maker, 81 C 670
delivery of note to one of eighty directors not as matter of law delivery to the association, 82 C 504
a check was given with an agreement that later another would be substituted therefor; *held* sufficient delivery, 83 C 520
the words "on or before negotiation" exclude "after," 85 C 148
negotiation means all acts by which note put in circulation, 85 C 148
under statute, negotiable paper can be transferred by parol and delivery, without indorsement, 86 C 403
must prove execution and delivery to recover, 86 C 579
fact that intermediate indorsement appears to have been erased is of no consequence, 87 C 248
where note and conditional bill of sale represent unpaid purchase price, indorsement of former carries benefit of latter, 94 C 210
delivery defined, 96 C 235
where, after delivery of note, payee objected to security given for it and defendant then put his name on back, inference proper that first delivery was annulled and only effective one was after indorsement, 97 C 313
acceptance of payee is essential of delivery, 97 C 319
mere indorsement does not effect a transfer; delivery and acceptance necessary, 97 C 480
——indorsement and delivery to one's lawyer, where it remains till death of owner, not a gift, 97 C 480
presumption that negotiation effected before instrument overdue, rebuttable, 105 C 78
delivery of certificate of deposit indorsed in blank transfers title, 118 C 45

§ 5. Rights of Holder Generally

payee reacquiring note is prima facie owner, 13 C 412
——may recover without reindorsement, 13 C 412
——may strike out all subsequent indorsements, 13 C 412
holder of renewal note is not precluded from recovery by retaining former note, 15 C 306
payee and indorser, on sending funds to holder to pay note, becomes again the owner and may sue maker, 18 C 257
holder indorsing to agent for collection merely, may recover in his own name, without striking out the indorsement, 24 C 333

indorser who pays holder, after bill is dishonored, becomes a purchaser, reinvested with original rights against prior parties, 29 C 347
holder of note negotiated after maturity, gains legal title and can sue in his own name, 29 C 347
nonnegotiable note indorsed by stranger, has none of the sanctity of a negotiable note, 32 C 378
——holder, put on inquiry as to real contract, 32 C 378
legal title must remain in plaintiff from commencement of suit to trial, 39 C 169
——effect of erasure of indorsements on plaintiff's title is a question of fact, 39 C 169
indorsee is proper party to present note not yet due, against insolvent estate, 40 C 163
payee may recover on collateral note, assigned him by one liable as joint maker, when such note was given to secure indorsement of assignor, 46 C 306
——though assignor could not recover on such note until he had paid first note, 46 C 311
——and though other indorsers of first note were dropped on its renewal, 46 C 313
right of holder of note as collateral to sue thereon; amount of recovery, 74 C 198, 77 C 634
indorser can sue on note indorsed for collection and return, 76 C 126
possession of note sufficient to give prima facie right to sue thereon, 76 C 132
holder of note, proper plaintiff though note is held in trust, 82 C 601
if note is pledged as collateral security and thence passes into other hands, payee cannot complain of finding that he is not true owner, 93 C 495
provision that renunciation of rights by holder "must be in writing," considered, 97 C 279
note given with conditional bill of sale may be sued on and right to retake property disregarded, 98 C 737
where two indorse jointly, holder may demand payment of one half of each, 101 C 708, 106 C 149
where holder of note made contract involving its assignment to indorser and latter failed to perform his obligation under contract, holder could sue on note, 114 C 620
purchaser of note, as equitable owner, entitled to have indorsement of payee; rights of such owner, 124 C 181, 182

§ 6. Holder in Due Course; Bona Fide Holder for Value

§ 7. ——What Constitutes; Notice of Defect; Bad Faith

holder taking with knowledge of fraud or other equitable circumstances, cannot claim such defense, 6 C 526
holder must have exercised due caution in taking, 8 C 336
——degree of caution necessary on part of indorsee, 8 C 337
——where word "renewal" appeared on accommodation note, 8 C 337
notice of suretyship of joint maker, to one of two jointly interested as indorsees, *held* notice to both, 19 C 199
town note to enlisted soldier; bona fides of purchaser, 37 C 53
note obtained by fraud; indorsed in trust to bona fide holder, for creditors, 37 C 205
——open to defense of fraud, as not having been taken in regular course of business, 37 C 205
bad faith must be more than negligence, 42 C 146, 54 C 383
person who indorses and negotiates bill for drawer before its acceptance by drawee does not thereby cease to be bona fide holder for value, 54 C 358
persons dealing in commercial paper of a corporation are bound to take notice of the extent of its power, 54 C 358
——if bill originated in fraud or wrong, plaintiff must prove that he gave value or parted with some right, 54 C 401
——cannot be a bona fide holder if he received bill upon a pre-existing debt not thereby affected, 54 C 401
——in such case he has paid nothing nor lost anything, 54 C 401
suspicious and even gross negligence are not enough per se to make one a mala fide holder, 54 C 383
certain facts reviewed and *held* insufficient to show fraud in indorser and holder of bill, 54 C 385
circumstances relied on to impeach bona fide holder should be positive and conclusive, 54 C 386
no presumption of law that indorsee knew of fraud in issuance of note, 71 C 61, 668
note acquired in "regular course of business," 71 C 668, 72 C 581, 78 C 184
facts showing notice of fraud must be proved, 71 C 668
sufficiency of notice of defect to affect holder, 72 C 576, 78 C 184
one who takes note as collateral security is holder in due course, 72 C 576, 77 C 634
bank not bound to know of fraud of cashier, 72 C 666, 79 C 348
instructions and evidence as to bona fide holding, etc., 78 C 184
whether one who takes note as collateral security is bona fide holder is one of fact, 78 C 211, 91 C 260
effect of statutory provision that due course is presumed, 79 C 348, 80 C 60, 82 C 333, 89 C 128, 592, 105 C 79
presumption that holder is bona fide one;

none where note is acquired by indorser fraudulently or without consideration, 80 C 58
certain circumstances indicating lack of good faith on part of foreign bank attempting to collect drafts from acceptor in this State considered, 82 C 24
one not a holder in due course unless he has given consideration, 82 C 333
if fraudulent holding once appears, it is presumed to continue, 82 C 337
nature and extent of doctrine of bona fide ownership by holder, 82 C 339
one who takes note of third person in payment of stock under agreement to collect it and remit any balance is holder in due course, 82 C 585
assignee of a note, who takes with knowledge of an agreement, is bound by its terms, 88 C 442
transferred when overdue not taken in due course though in good faith, 88 C 720, 89 C 592, 105 C 79
purchase of note for less than face value tends to show one not holder in due course, 89 C 128
if there is fraud in inception of note, holder must prove bona fides, 89 C 128
small consideration as evidence of bad faith, 89 C 128
one not holder in due course if he takes matured and paid note fraudulently altered, 89 C 592
not bad faith in purchase of note without knowing agreement between parties, 91 C 260
——knowledge a question of fact, 91 C 263
knowledge of holder that indorsement was for accommodation does not prevent him from being holder in due course nor impair right to recover, 92 C 707
——and likewise where note given for accommodation, 97 C 711
burden of proof that holder is not in due course is on indorser contesting liability except when affected by the statute, 92 C 707, 102 C 624
purchaser of corporate bonds from pledgee before maturity is holder in due course though he paid less than par, 97 C 592
consideration necessary to make one a holder in due course, 102 C 620
four conditions necessary to make an indorsee a holder in due course, 105 C 74
failure for four years to attempt to collect on note as evidence that it was not taken in due course, 105 C 74
presumptions raised by Negotiable Instruments Law in favor of holder of note are all rebuttable, 105 C 74
ordinarily possession is deemed to be in due course, 106 C 147
——but if it appears that instrument came from one having defective title burden is on holder to prove that he took it before maturity for value in good faith and without notice, 106 C 147
——to be holder in due course one need not pay full value, but inadequacy of consideration with other circumstances may show want of good faith, 106 C 147
purchaser of trade acceptance at large discount and under suspicious circumstances, *held* put on notice of defects in title, 106 C 147
bank to whom bankrupt transferred warehouse receipt *held* not a bona fide holder, 110 C 583
when burden of proof on holder of negotiable instrument to prove good faith, 111 C 178
"holder" and "holder in due course" defined and distinction stated, 111 C 629
conditions determining "holder in due course," 118 C 112
——holder who received note indorsed in blank in return for surrendering claim against bearer, and without knowledge of facts affecting title, *held* holder in due course, 118 C 112
where notice of infirmity in instrument is imputed to holder so that he will not be holder in due course, 119 C 368
doctrine of notice as it affects transactions generally does not apply to negotiable instruments, 119 C 368
——no duty rests on purchaser to make inquiry as to purpose for which note was given, responsibility of maker or indorser, or existence of possible defense, 119 C 368
——test not whether plaintiff was negligent in acquiring paper but whether he acted in good faith, 119 C 368
——not failure to inquire but dishonest purpose which establishes bad faith, 119 C 368
——and in instant case bank discounting note *held* not under duty to make inquiry as to circumstances under which maker executed note, 119 C 368
——at most question of bad faith one for trier, 119 C 368
where maker induced to sign note by false representations, there is infirmity in instrument which casts on plaintiff burden of showing that he acquired title as holder in due course, 119 C 370
——must show he took note without notice of infirmity, 119 C 370
——to constitute such notice plaintiff must have actual knowledge of infirmity or knowledge of such facts that actual taking of note amounted to bad faith, 119 C 368
not now law of Florida that knowledge by indorsee that note was given in consideration of executory agreement by payee, deprives him of character as holder in due course, if payee fails to perform, though

holder had no knowledge of breach at time note acquired, 120 C 419
——when note valid at inception, default in performance of agreement will not defeat recovery by transferee though he knew of agreement, 120 C 424
——so in present case where payee of note given in payment for land agreed to make improvments, 120 C 419
——and finding that indorsee knew of agreement and that improvements had not been made at time of acquisition of note, was not finding that there had been breach of agreement at that time, 120 C 420
——purchase of note by indorsee at 83 per cent of face value not conclusive of bad faith; question one of fact, 120 C 426
bank which gives depositor draft of amount in her account and later cashes it after her account has been garnisheed, does not become holder in due course, 122 C 171
where payee named in note did not actually indorse, one who purchased note did not become holder in due course, 124 C 180
where plaintiff testified that he paid nothing for notes, finding that he was not bona fide holder for value must stand, though in answer to interrogatory he had stated that there was valuable consideration, 126 C 336

§ 8. ——Rights of; Protection Afforded Such Holder

indorser of nonnegotiable note is liable to innocent indorsee of note, void as to maker, 3 D 12
note growing out of illegal sale of lottery ticket, when valid, 4 C 442
subsequent bona fide holder is not affected by want of consideration between original parties, 6 C 521, 11 C 388, 18 C 443
fraud no defense against bona fide holder exercising due caution in taking note, 8 C 337, 37 C 210, 46 C 435, 47 C 347, 63 C 64
——word "renewal" on accommodation note, effect of, 8 C 337
indorsee of past due nonnegotiable note without negligence, has superior equity to owner whose negligence permitted fraudulent assignment, 11 C 37
bona fide holder not affected by fraud of prior party, 11 C 388
fraud, a defense only where holder was privy to it, 18 C 157
——or took note under suspicious circumstances, 18 C 158
maker, rather than bona fide holder, must suffer, when, 18 C 358
want of consideration between original parties to note, is no defense to action by bona fide indorsee, 18 C 443
fraudulent representations to accommodation indorser, inadmissible against bona fide holder, 27 C 381
bona fide holder of stolen bank bills may recover of bank, 32 C 278
——cannot pass good title to one knowing them to be stolen, 32 C 278
mere purchase of stolen bank bills at a discount, if bona fide, does not bar recovery, 32 C 284
indorsement on Sunday of note made on week day; no defense unless plaintiff had knowledge, 40 C 226
whether payee without notice is affected by maker's fraud in the use of stamps on note, quaere, 40 C 332
fraud or want of consideration no defense against bona fide holder of note who took it before it came due, 46 C 435
maker of negotiable note, liable to bona fide holder, though maker misunderstood legal effect of note, 47 C 347
fraud, no defense against bona fide holder of negotiable note, 47 C 349, 63 C 64, 64 C 61
——"earnest solicitation" of holder of note given in place of one void for fraud is no defense, 63 C 64
——in absence of fraud, 63 C 64
bona fide holder of partnership note without knowledge, whether affected by character of partnership, quaere, 53 C 53
——whether note made by individual members of such a partnership for firm debt is binding, quaere, 53 C 53
bona fide holder of accommodation note secured by fraud may sue thereon; amount of recovery, 64 C 61, 74 C 198
fraud in securing, no defense unless notice shown; facts showing this must be proved, 71 C 668, 72 C 576
that note in hands of bona fide holder was stolen no defense, 71 C 685
fraud of defendant not participated in by one who takes note as collateral security, no defense to suit by him, 74 C 200
agreement on delivery of note as to its use will not affect bona fide holder, 76 C 126
want of consideration no defense against bona fide holder, except where note is for accommodation, and payee appropriates it to unauthorized purpose, 77 C 634
certain circumstances indicating lack of good faith on part of foreign bank attempting to collect drafts from acceptor in this State considered, 82 C 24
holder of note materially altered, may enforce it according to original tenor if alteration was made before it was overdue, 89 C 592
——burden on holder to prove he took altered note in due course, 89 C 592
usury under laws of Illinois as between payee and pledgor no defense in suit by pledgee, 91 C 553
——pledgee of note, holder in due course, 91 C 558
——holder of note given without considera-

tion as collateral security can enforce only to extent of debt secured, 91 C 553
agreement between indorsers that all should indorse renewal note no defense to holder in due course, 92 C 708
trustee of bankrupt maker cannot collect on notes transferred in due course and for consideration, and hold proceeds against transferee, 94 C 210
as regards holder for value, it is immaterial whether he knew note was one for accommodation, 97 C 708
holder in due course of note jointly indorsed may sue maker and indorsers jointly or separately, 101 C 708
fraud in issuance of negotiable trade acceptances of which holder in due course had no knowledge, no defense, 114 C 694
note enforceable by holder in due course without regard to defects of title by prior parties, 118 C 112

§ 9. Rights and Liabilities of Parties Generally

§ 10. ——Maker

one executing joint and several note as surety, liable as maker, 13 C 412
liability of agent, once attaching to note, continues until note is paid, 40 C 32
signed "A. J. and J. H Hopkins," *held* J. M. Hopkins was liable on proof that signature was adopted by him as his own, 61 C 47
——and *held,* if J. M. Hopkins not being a partner induced payee to believe he intended to be bound by the signature, he would be estopped to deny liability, 61 C 47
liability of maker on note paid but reissued; where he is negligent, 72 C 576
action lies on notes not voluntarily cancelled or surrendered, and for which no equivalent was given, 82 C 609
where trustees of church intend note to be binding upon it and it is given to renew note for money spent on church and is carried on its books, interest paid, etc., church cannot dispute it against indorsee, 102 C 609
obligation of co-makers a primary one; each equally bound to meet the promise of the note, 109 C 114
payment of interest on note by maker tolls statute as to him, 116 C 563

§ 11. ——Indorser

two notes on one piece of paper; indorsement extends only to the one on back of which it is written, 1 R 386
indorsers liable to each other in order of indorsements, 3 D 512
joint indorsers are not thereby partners, 1 C 370
indorsement of note after maturity is equivalent to new making, 2 C 419
indorser "without recourse" only liable in case of fraud, 3 C 516
undertaking of indorser, a collateral one, 6 C 317
indorser's liability, once fixed by demand and notice, is not discharged by subsequent second indorsement, 6 C 443
party neglecting agreement to indorse, cannot claim indorser's rights, 13 C 547
indorsement is a warranty of note's genuineness and validity, 14 C 385
firm liable as ordinary indorsers to one partner, when, 14 C 543
indorser liable, under money counts, to indorsee who paid under promise of indemnity without demand on maker, 21 C 406
note delivered with words on back "Received year's interest on within, A. B.;" A. B. not indorser without evidence aliunde, 45 C 149
no legal distinction between indorsement by third party for security and that for discount, 50 C 168
——the law, not the usage of banks, determines the contract, 50 C 168
indorsement by third party before that of payee *held* notice that indorsement was not for value, 50 C 168
——or in regular course of business, 50 C 168
——not to be controlled by secret intent, 50 C 169
court may require parties to write contract claimed over blank indorsement, 50 C 169
——when such contract is different from the one implied by law, 50 C 169
——and this is proper as a means of notifying adverse party, 50 C 169
indorser who merely sells note through his indorsee for benefit of maker, does not stand in relation as indorsee, 54 C 413
——according to New York law he cannot recover of maker unless he gave value for the note, 54 C 413
statute de indorsement of notes by a stranger construed, 60 C 416
——stranger liable to payee as indorser, though his name appears above payee's on back, 60 C 418
——the contract which the statute now imports cannot be varied by parol, 60 C 421
what contract the law implies from indorsement of negotiable note, 60 C 417
effect of indorsement in blank before 1884, 66 C 462, 74 C 309
promise to indorse implies unrestricted indorsement, 71 C 418
distinct similar indorsements on same note, 71 C 418
real and apparent authority of treasurer of corporation to indorse note of corporation, 71 C 668

contract of indorsement, 73 C 103, 74 C 309
law of time of making governs; special parol contract, 73 C 103
power of officer of company to indorse paper, 85 C 148
when indorser may set off a deposit against his liability, 88 C 185
effect of indorsements on note forwarded "for collection and remittance," 88 C 202
indorsement to bank for collection and forwarded through chain of banks, 91 C 678
unconditional indorsement not changed by oral evidence, 92 C 591
——each renewal note is new contract, 92 C 705
under statutes new promise by indorser with knowledge of the facts revives liability, 94 C 495
nature of indorser's undertaking, 94 C 497
presumed that one whose name is on back of note ahead of payee's made on subsequent negotiation, is liable to holder in due course as an indorser, 97 C 313
warranty of indorser of negotiable and non-negotiable note, 111 C 69
liability of indorser as to instalment due is same as on separate note, 111 C 568
——he agrees to pay it upon due presentment and notice of dishonor, 111 C 568
——effect of option of holder to declare whole note due if instalment unpaid for five days, 111 C 568
a person not otherwise party to a negotiable note who places his signature upon it is liable as indorser, 111 C 631
agreement between indorsers that prior indorser should not be liable as such, 111 C 663
acts of maker of note sufficient to toll the statute as to him do not affect liability of indorser who does not authorize, participate or acquiesce in them, 116 C 557
——payments of interest by maker, though made with knowledge of the indorser, insufficient to remove the bar of the statute, 116 C 557
"for value received the undersigned hereby jointly and severally guarantee the within note" etc., whether guaranty or indorsement, quaere, 116 C 557
——signers by waiving demand, notice of non-payment and protest become immediately liable upon it, 116 C 560
signers of guaranty of payment with a waiver of presentment, protest and notice of dishonor have been held in numerous cases to be indorsers with an enlarged liability, 117 C 15
four defendants signed form on back of note "I hereby . . . guarantee payments" waiving demand, protest, etc., and plaintiff signed after them; parties all signed in absence of others, there was no agreement as to liabilities between them, and they all signed as accommodation to maker; *held*
——that language "I guarantee" may as well have been used as undertaking of indorser, as that of guarantor, 117 C 15
——that the waiver was consistent with liability as indorser, 117 C 15
——that terms indicated intent was to assume obligations of indorser, 117 C 15
——that as there were no facts to support an inferred agreement for joint liability, the statutory rule of successive liability applies, 117 C 15
difference between liability of guarantor and indorser, 117 C 21
——latter liable only upon condition of presentment on exact day of maturity and due notice of dishonor, 117 C 21
——former bound to pay upon presentment and notice of dishonor within reasonable time, 117 C 21
——also in event of failure, former only discharged from liability to extent he has suffered loss from the delay, 117 C 21
same person may be guarantor and indorser; failure to give him notice of demand and nonpayment will discharge him as indorser; but he is still bound as guarantor, 117 C 21
statutory rule of successive liability of indorsers; grounds upon which it rests; effects, 117 C 24
liability of indorser on instalment note containing acceleration clause, 121 C 140
——as acceleration clause not self-executing, demand upon maker necessary to accelerate payment of entire debt, 121 C 146
——and so letter to indorser looking to him for payment of debt was not exercise of option, no demand having been made on maker, 121 C 140
——failure of holder to exercise option to accelerate for default in payment of prior instalments, did not discharge indorser, except as to these instalments, 121 C 141
——contract not modified and indorser not discharged by acceptance of instalments of less than amount called for by note, holder being in ignorance of fact that note called for larger instalments, 121 C 140

§ 12. ——Accommodation Parties

accommodation indorsers; facts constituting joint indorsement, 3 D 512
stockholder who indorses company's notes for its benefit is not an accommodation indorser, 14 C 386
person indorsing at payee's request, in order to obtain a discount at bank; second indorsement by payee; *held* first indorser not a guarantor of note, 24 C 578
parties to accommodation paper liable to each other in order, 28 C 429

——in absence of contrary agreement, 28 C 429
accommodation indorser is liable on note given for pre-existing debt, 29 C 475
holder of accommodation paper with full notice, cannot recover of maker, 35 C 366
——original agreement and holder's assent thereto, provable by parol, 35 C 366
relative rights and duties of indorsers of accommodation paper, same as in case of business note, 40 C 77
——knowledge of both that each was accommodation indorser, does not affect the case, 40 C 77
stipulation that first accommodation indorser shall not be liable to second is no defense, if unknown to second indorser, 40 C 235
indorser of accommodation paper, complete in form, is not liable if same be materially altered without his knowledge, consent, or negligence, 43 C 405
mere series of indorsements does not constitute maker indorser's agent, 43 C 406
——nor is it negligence by indorser, 43 C 406
indorser of accommodation paper liable though note was disposed of by maker contrary to agreement, 43 C 548
——subsequent indorsee of, not liable to indorser for violating agreement with maker, 43 C 555
indorsement of accommodation paper in blank; indorsement by payee above first indorsement, 46 C 561
——parol evidence restricting indorsement, inadmissible against holder without notice, 46 C 565
indorsement of note of railroad company by insurance company; facts *held* to show accommodation, 50 C 167
——insurance company *held* not equitably estopped from denying authority of its indorsement, 50 C 168
——where holder had full knowledge of the facts, 50 C 168
life insurance company has no power to indorse, 50 C 168
——accommodation indorsement by corporation *held* ultra vires, 50 C 168, 85 C 147
company has power to deal in negotiable paper in the line of its business, 54 C 358
——but may become liable for accommodation draft to a bona fide holder without notice, 54 C 387
——persons dealing in the negotiable paper of company are bound to take notice of the extent of its powers, 54 C 358
——but a distinction exists between the terms of a power and the circumstance of its exercise, 54 C 358
——especially where officer exercising power represents the company in giving the information as to the circumstances under which it is exercised, 54 C 358
as a rule a manufacturing company is not empowered to accept an accommodation draft, 54 C 380
——the question as to all parties with notice would be, is the draft for a legitimate purpose, 54 C 381
——as to one without notice; is the holder a bona fide holder for value, 54 C 381
——the defendant assumes burden of proof to show that draft was not for a legitimate purpose, 54 C 381
——plaintiff establishes a prima facie case in presenting the drafts duly drawn and accepted, 54 C 358
manufacturing company has no right to loan its credit for the private purposes of its president, 54 C 400
——extent of obligation and defenses, 54 C 401
——plaintiff must prove that he is a bona fide holder, 54 C 401
——holder of bill accepted by treasurer of company for private use of drawer, cannot recover of company if he had notice of the facts, 54 C 411
accommodation indorser of conditional bill of sale discounted by bank is not liable as an ordinary indorser of a negotiable note, 60 C 402
——law will not invent the fiction of a loan to indorser, contrary to fact, 60 C 409
——or treat it as a loan to payee upon indorser's request and promise to pay, 60 C 409
accommodation indorser entitled to reimbursement; may be such, though owing money to maker, 79 C 449, 87 C 104
accommodation indorser defined and his liability, 85 C 147, 92 C 708, 93 C 359, 97 C 711
indorser held on notes that replaced others, 85 C 147
trading company cannot indorse for accommodation, 85 C 148
accommodation indorser must refund preferential payments in bankruptcy, 86 C 690
accommodation indorser is creditor within Bankruptcy Act, 86 C 690
liability of indorser for accommodation begins when, 87 C 104
accommodation indorser is creditor of maker, 87 C 104
failure of accommodation indorser to indorse renewal note does not relieve other indorsers, 92 C 705
successive accommodation indorsers liable in order of their names, 101 C 465
——in absence of contrary agreement, which must be clearly proved, 101 C 465
——not by mere statements of maker to one indorser, 101 C 465

accommodation indorser has same right as maker to contest a usurious note, 101 C 555
"accommodation party" defined, 102 C 34
"value therefor" as used in statutory definition of accommodation party, means value for the instrument, not for loan of name, 102 C 34
accommodation indorser may contest usurious note same as maker, 102 C 34
accommodation indorser not discharged by payee's failure to act against maker or bring suit against indorser until maker has gone into hands of receiver, 108 C 149
——nor by act of payee, who had discounted note and paid it on dishonor, in thereafter charging amount due on its open account against maker, 108 C 150
——this did not change date debt was due which had thus become one on demand nor amount to cancellation or renunciation of note, 108 C 151
comakers of note who execute it for accommodation of other maker are primary obligors, not guarantors, 109 C 110
——accommodation maker liable to bona fide holder, though he knew him to be such, 109 C 110
accommodation indorsers may specially agree that they are to be liable jointly as cosureties and not severally, in which case there is right of contribution between them, 117 C 15
——such agreement may be proven by parol or inferred from circumstances, 117 C 15
——most instances where agreement to be jointly liable is inferred are where indorsers were stockholders in corporation which was maker of note given to raise money for corporate purposes, 117 C 22
receiver took note in part payment of sale of assets, indorsed it individually before delivery and for purpose of lending credit to instrument and plaintiff purchased note without indorsement of receiver, 124 C 177
——in suit against receiver individually *held* defendant an accommodation indorser without qualification and plaintiff, while not holder in due course, was equitable owner and entitled to indorsement of payee, 124 C 177
——defendant obligated by warranties of indorser, including that all prior parties had capacity to contract and that he had no knowledge of facts impairing validity of note, 124 C 177
——plaintiff as purchaser can hold him to warranties, 124 C 177
——fact that indorsement was made to give credit to note and that receiver was not acting in conformity with court authority in manner of selling assets, not defenses available to defendant, 124 C 177
where record simply showed that husband and wife signed joint note and chattel mortgage given to secure it, wife could not be held accommodation party as matter of law, 128 C 259
where insurance agent took note of defendant for premium and indorsed it to company without insured's knowledge, there was no negotiation by defendant after indorsement such as would support action by agent as accommodation indorser, 129 C 472
an indorsement for accommodation must be before delivery, 129 C 474

§ 13. ——Guarantor

indorsement in blank of note by stranger imports warranty that note will be recoverable when due, 2 R 325, 11 C 212
indorsee of nonnegotiable note need not attach maker's property, if insufficient, 4 D 460, 4 C 527
indorser of nonnegotiable note is discharged by delay of officer or clerk, when, 5 D 533
what diligence required of holder, to subject indorser of nonnegotiable note, 4 C 124
indorsement of nonnegotiable note in blank, implies what warranty, 4 C 124, 527, 5 C 175, 11 C 212, 16 C 223, 26 C 437, 32 C 378, 48 C 413
——holder of such note cannot vary indorser's liability, by writing absolute promise over indorser's signature, 4 C 124
indorser's promise after discharge by laches, is void for want of consideration, 4 C 125
assignee of nonnegotiable note, as purchaser, is not assignor's agent, 4 C 527
assignee of nonnegotiable note must use what diligence, 4 C 527, 5 C 175
——when required to arrest maker, 4 C 527
assignee of nonnegotiable note in no case required to attach maker's real estate in order to subject assignor, 4 C 527
holder sustained in writing over blank indorsement parol agreement of guaranty, 6 C 315
guaranty is prima facie implied from indorsement in blank of negotiable note, 6 C 317
——assignor may show that indorsement was in blank, 6 C 317
indorsement in blank of negotiable note by stranger implies what, 7 C 300, 46 C 410, 50 C 168
——by blank indorsement of stranger, as security, 11 C 440
the law declares the contract implied by blank indorsement of nonnegotiable note, 16 C 223
——blank need not be filled up before trial, 16 C 223
——except where special contract be proved, 16 C 234
——legal effect the same, whether note be on time or demand, 16 C 223

——due diligence may differ, however, in the two cases, 16 C 224
indorser of nonnegotiable note may require holder to attach, 16 C 224
——holder's neglect, after notice, discharges indorser, 16 C 224
what is a reasonable delay in forbearance to sue on a one day note, 25 C 582
holder of negotiable or nonnegotiable note indorsed in blank by stranger should attach, on maker's default, 26 C 437, 36 C 1, 46 C 410
——unless maker is insolvent, 26 C 437, 36 C 1
——merely suffering protest is not prima facie evidence of insolvency, 26 C 437
guaranty by payee, for limited time; negotiability, 31 C 47
indorsement in blank by third person of note, negotiable or not, implies warranty that note will be collectible by due diligence, 32 C 378
——but has none of the sanctity of ordinary negotiable paper, 32 C 378
——holder put on inquiry as to real contract, 32 C 378
contract implied by law from guaranty, 36 C 1
contract may be implied from blank indorsement, as fully as if written out, 38 C 15
——and parol evidence is not admissible to contradict it, 38 C 15
legal import of blank indorsement by stranger to note, 38 C 23
neglect to institute suit, not excused by maker's insolvency, when, 38 C 23
——nor by holder's ignorance of maker's having attachable property, 38 C 23
exercise of due diligence requires what, 38 C 23
note made in New York but guaranty in Connecticut; contract of guaranty governed by Connecticut law, 40 C 226
guarantor estopped from setting up plaintiff's laches, when, 40 C 236
what is due diligence, where maker is a nonresident, 42 C 348
no preliminary demand on guarantor essential, if maker be insolvent, 48 C 413
holder of nonnegotiable note is not bound to attach insufficient property of maker before resorting to guarantor, 48 C 415
guaranty that note is collectible, is conditional, 50 C 9
——condition is that holder use diligence, 50 C 9, 588
——what is due diligence, 50 C 9
——not necessary to sue in every instance, 50 C 22
——but where the exact diligence required is stipulated, it must be followed, 50 C 22
——burden on plaintiff to prove diligence, 50 C 22
——or insolvency of maker, or that guarantors waive legal proceedings, 50 C 9
——holder not bound to attach real estate, if there is no personal property, 50 C 588
——need not use legal process if it will be of no avail, 50 C 588
where note is paid by guarantors as such, maker cannot object that holder did not use due diligence, 50 C 597
——diligence is for benefit of guarantors and they may waive, 50 C 597
guaranty *held* to follow note where plainly intended for holder and not solely for payee, 50 C 597
parol guaranty on notes indorsed by plaintiff *held* within Statute of Frauds, 52 C 464
——promise of guarantor to pay balance of plaintiff's claim if he would sign compromise with maker, void, as fraudulent on creditors, 52 C 464
——note given in pursuance of such agreement *held* void, 52 C 464
——and guaranty of original guarantor on such note of no effect, 52 C 464
"for value received we guaranty the within note till paid," *held* absolute and unqualified, 53 C 455
——no demand on maker or notice necessary, 53 C 455
——holder not to be charged with loss, though he makes no attempt to collect from maker, 53 C 454
——where guarantors had not requested him to do so, or taken any measures themselves, 53 C 454
——where maker continued solvent year and a half after making notes, then became insolvent, refusal of holder to sue, *held* not laches, 53 C 454
"I guaranty the within note good till paid," *held* a conditional undertaking, 55 C 251
——is an undertaking to pay if payment cannot be obtained by reasonable diligence from debtor, 55 C 251
——"good" imports what in the above guaranty, 55 C 251
guaranty of note, requires a sufficient legal consideration, 55 C 251
distinction between absolute and conditional guaranty, 55 C 253
"I hereby warrant the within note good and collectible until paid," *held* conditional and not absolute, 55 C 443
——"until paid" marks duration of collectibility, 55 C 443
——guaranties collectibility of note at any and all times until actual payment, 55 C 448
——the test of the collectibility of a note, is legal proceedings reasonably and diligently pursued, 55 C 443
——a suit against maker seven years after

date of note, *held* seasonably brought, 55 C 443
"we guaranty payment of the within note and warrant the same good and collectible until paid," *held* absolute and not conditional, 57 C 435
guaranty of payment of interest in consideration of forbearance on note for two years, *held* not limited to such two years, 58 C 391
——but guarantied interest until principal was paid, 58 C 376
precedent negotiations on Sunday *held* not to invalidate guaranty made on ensuing week day, 58 C 376
where guarantied notes were presented against the estate of the deceased maker and afterwards were withdrawn by holder, *held* guarantor not discharged thereby, 58 C 376
assignment of note *held* to pass guaranty as well, 59 C 448
blank indorsement of a note by a stranger imported a guaranty prior to act of 1884, 60 C 410
——but statute makes contract no longer one of guaranty, 60 C 410
——the statute brings our law into harmony with the general law merchant, 60 C 416
one intending to contract as second indorsee, should see that his name is so placed on the note, 60 C 410
——if as guarantor, should write out contract above his signature, 60 C 410
A B C & D signed a joint and several note for benefit of A; D prefixed "surety" to his signature, *held* upon facts, D was surety for the sureties, 62 C 459
——as such not liable for contribution, 62 C 459
——if compelled to pay note, D's claim against other sureties would be for indemnity, not contribution, 62 C 460
——does not affect legality of contract that he signed as surety without knowledge of others, 62 C 460
——though it might affect his right to indemnity, 62 C 460
——a judgment against all signers as joint makers could not affect their rights between themselves, 62 C 460
contract of surety to be strictly construed, 62 C 470
liability of indorser in blank of nonnegotiable note prior to act of 1884; of negotiable note, where not a party to it; barred when, 66 C 462
continuing guaranty of notes equivalent to indorsement of each, 67 C 155
liability of guarantor of demand note, which provides for interest payable semiannually, 71 C 39
right of guarantor to have collateral first applied, 93 C 119
——subrogation of guarantor where holder has option to apply it to other indebtedness, 93 C 119
guarantor of note, secured by third mortgage, not released by transaction whereby second mortgage is foreclosed and a new third mortgage given, if the security is improved, 97 C 358
——but is released when premises are discharged upon payment of less than sum due, 97 C 358
giving extension after demand for payment as discharge of indorser, 108 C 492
indorser of nonnegotiable note warrants note collectible by use of due diligence in suing maker and attaching property, 111 C 65
——but suit within seven days after whole note due by acceleration clause not too late as matter of law, 111 C 65
——in any event, allegation that maker did not possess sufficient assets to pay it obviates necessity of suit against him, 111 C 65
——due diligence does not require bringing of suit which would be fruitless, 111 C 65
——presentment not necessary, 111 C 65
liability of indorser of acceleration note fixed by presentment on day option exercised with due notice of dishonor, 111 C 571
note is collectible by use of due diligence, which does not require that holder bring fruitless suit against maker, 116 C 418
——as where maker is financially irresponsible, 116 C 418
"for value received the undersigned hereby jointly and severally guarantee the within note"; whether guaranty or indorsement, quaere, 116 C 560
four defendants signed form on back of note "I hereby . . . guarantee payments" waiving demand, protest, etc., and plaintiff signed after them; parties all signed in absence of others, there was no agreement as to liabilities between them, and they all signed as accommodation to maker; *held*
——that language "I guarantee" may as well have been used as undertaking of indorser, as that of guarantor, 117 C 15
——that the waiver was consistent with liability as indorser, 117 C 15
——that terms indicated intent was to assume obligations of indorser, 117 C 15
——that as there were no facts to support an inferred agreement for joint liability, the statutory rule of successive liability applies, 117 C 15
signers of guaranty of payment with a waiver of presentment, protest and notice of dishonor have been held in numerous cases to be indorsers with an enlarged liability, 117 C 15

same person may be guarantor and indorser; failure to give him notice of demand and nonpayment will discharge him as indorser; but he is still bound as guarantor, 117 C 21
difference between liability of guarantor and indorser, 117 C 21
——latter liable only upon condition of presentment on exact day of maturity and due notice of dishonor, 117 C 21
——former bound to pay upon presentment and notice of dishonor within reasonable time, 117 C 21
——also in event of failure, former only discharged from liability to extent he has suffered loss from the delay, 117 C 21

§ 14. ——Defenses: Alteration of Instrument, Want or Failure of Consideration, Forgery, Fraud, Illegality, Etc.

a total fraud in consideration renders bill or note void, 1 C 329, 5 C 528
indorser's promise, after he is discharged by holder's laches, is void for want of consideration, 4 C 125
effect of indorser's waiver of laches of holder, 4 C 125
damage to indorser need not be shown, to discharge him by holder's laches, 5 C 176
——set-off must have arisen from same transaction, 10 C 35, 11 C 39
note negotiated when overdue is subject to equitable defenses, 6 C 5, 10 C 30, 11 C 38, 47 C 417
——applies to demand note, 6 C 5
——equities must have existed at time of transfer, 10 C 30, 11 C 39, 47 C 418
partial failure of consideration may be shown as between original parties, 6 C 521
want of consideration may be shown as against purchaser of overdue note, 6 C 521
want of consideration may be shown between the original parties, 6 C 521, 11 C 390, 19 C 17
——may be shown between maker and indorsee who is not holder for value, 6 C 526
——such holder is in privity with maker, 6 C 526
want of consideration avoids nonnegotiable note, 9 C 242
want of consideration may be shown as against one having notice of restricted nature of indorsement, 11 C 390
——as against original owner by whose misfortune or negligence one of two innocent persons must suffer, 11 C 392
plaintiff's negligence if harmless, is no defense, 12 C 303
fraud or want of consideration renders note void, 12 C 569
party neglecting agreement to indorse cannot claim indorser's rights, 13 C 547
if consideration be partly valid, in absence of fraud, the note is not void, 15 C 512
in scire facias, maker of note given in consideration of note decreed void, not liable because equitably entitled to set-off, 16 C 215
——or because of failure of consideration, 16 C 217
mere indulgence to maker is not discharge of indorser, 18 C 361
——what acts only, will have that effect, 18 C 361
acquiescence and silence of party whose name is forged, as an estoppel, 26 C 24
——is an implied warranty as to genuineness of signature, 26 C 33
indorsee of overdue note, void because for liquors, takes it subject to that defense, 31 C 47
alteration of a blank indorsement in the form of an inchoate bill, on a note, is bound to put receiver on his guard, 31 C 170
drunkenness must be excessive or complete to avail as a defense, 35 C 170
——ability to sign, recollection of act next day, etc., insufficient defense, 35 C 170
effect of holder's wilful neglect to inquire into collateral agreement, 42 C 149
written order for chattel is open to all equitable defenses against assignee, 44 C 267
assignee of nonnegotiable note takes subject to all equities and defenses, 47 C 418
——whether attaching to note or not, 47 C 418
fraudulent transfer of negotiable note; suit by assignee *held* in effect a suit by assignor, 57 C 152
——maker has same right of set-off as against assignor, 57 C 152
matters open in defense of note acquired when overdue; collateral agreements; agreement to forbear presentation, 70 C 9
failure of consideration by fault of maker no defense to him, 73 C 144
accommodation maker cannot set up lack of consideration against one who acquires note even after maturity, unless payee has appropriated it to purpose not intended, 77 C 636
seal does not preclude defense of want of consideration, 81 C 670
note given in part payment for construction of building is wanting in consideration, if contractor abandons building and nothing is due him, 82 C 244
fraudulent misrepresentations inducing defendant to give note, vitiated contract, 86 C 100
when not negligence in maker to allow matured note to remain in hands of holder, 89 C 592
——not estopped to deny liability if it is thereafter fraudulently altered, 89 C 592
failure of consideration as defense against

pledgee of note to amount of the pledge, 91 C 553
agreement by several to indorse and failure by one, no defense to indorser sued by holder, 92 C 708
acceptor of bill of exchange cannot show want of consideration as a defense, 93 C 392
failure of consideration in whole or part is a good defense, 95 C 248
defense of usury not available to indorser not party to usurious agreement nor injured by it, 97 C 313
when usury between maker and payee available to indorser, 99 C 683
where maker alleges fraudulent representations in defense, he must prove plaintiff payee knew they were false or made them without a belief as to their truth or recklessly to induce defendant to act upon them, 10 C 274
accommodation indorser may contest usurious note same as maker, 101 C 555, 102 C 34
when mortgage note is nonnegotiable, mortgagor with notice of assignment, entitled to raise all equities and defenses against assignee which existed at time of assignment, 104 C 696
one who takes note after maturity, takes subject to all prior defenses, such as payment in full by maker, 105 C 79
in an action on note or bill given in sale of goods, fraud inducing sale is good defense between immediate parties, provided rescission made promptly and goods returned, 105 C 434
one who takes after maturity acquires subject to all defenses, 108 C 26
holder of mortgage securing nonnegotiable note is subject to all defenses good against payee, 110 C 439
where note given with intent to violate usury statute no recovery against maker for either face amount of note or amount actually loaned, 113 C 573
where original note was usurious, defense is available against a renewal note, 126 C 339
partial failure of consideration a defense pro tanto; so if face of note exceeds amount actually paid recovery as between parties limited to that amount, 126 C 556
conclusion that certain indorsements on note were forgeries sustained, 127 C 144
——and that agreed purpose of second note was to cover amount of defalcation not covered by first note, 127 C 144
allegation in complaint that two notes were for purpose of restitution of shortages and claim for judgment in amount sufficient to pay them were sufficient to open door to discovery of real purpose of notes, 127 C 144
if face of note exceeds amount of debt it represents, recovery as between parties limited to that amount, 127 C 144
"alteration" as used in section providing that alteration in instrument is material and avoids it as to parties not assenting implies an intentional act; an accidental obliteration is not an alteration, 128 C 243
——conclusion that mutilation of note was not intentional and not an alteration was finding of fact supported by evidence, 128 C 243
money "he was supposed to give her later," where no promise on husband's part to give it, no valid consideration for note, 128 C 243
failure in whole or part of consideration is good defense in whole or part to action on note, 128 C 246
there being no legal obligation on part of wife to pay for services and expenditures on her property by husband, they were not valid consideration for note, 128 C 247
where defendants gave cash and note in settlement of mortgage upon representation of plaintiff that much larger sum was due on it than was actually due, there was substantial failure of consideration, 129 C 194

§ 15. Maturity

note payable in specific articles on demand; special demand necessary, 1 R 191
after protest for nonacceptance, action lies before bill is payable, 1 D 11
bills or notes payable at banks are entitled to three days of grace, 1 C 329
if no time for payment is specified, regarded as payable on demand, 1 C 404
no action accrues where delivery is conditional until condition be fulfilled, 1 C 496
promissory notes within the statute are entitled to days of grace, 2 C 478
nonnegotiable notes are entitled to no days of grace, 10 C 304
demand note with interest, indorsed when made, construed not to contemplate immediate demand, but payable in future, 18 C 361
days of grace are not part of the original contract, 31 C 261
——custom contemplates events which may happen when note falls due; as a holiday, 31 C 261
demand note with interest, secured by mortgage; agreement to let it lie, 31 C 273
——not overdue in two years, no demand being made, 31 C 269
——when overdue, a question for jury, 31 C 269
statute making demand note due four months after date, does not affect original parties, 44 C 300
if no time is specified for payment of interest, it is payable when principal is, 54 C 27
where negotiable demand note contained provision for interest semiannually in advance, it will run for some time and at least six months, 71 C 39

under statute, demand note is overdue after four months, 74 C 304, 78 C 267
——not so, if note is nonnegotiable, 74 C 304
at common law, demand note is not dishonored until after reasonable time; but interest and Statute of Limitations run from date, 75 C 429
if no time fixed for payment, it is payable on demand, 75 C 431
——unless special agreement provides otherwise, 78 C 319
demand note is payable immediately, unless contrary intent appears, 78 C 319, 84 C 54
what is meant by notes payable on demand, 84 C 54
provision accelerating due date on default of interest or instalment, 97 C 353
maker of note may prove later promise to extend time of payment, 100 C 427
——such a promise must be supported by consideration, 100 C 427
where holder has option to declare whole note due if instalment not paid in five days, he has reasonable time thereafter to exercise option, 111 C 568
——obligation of parties date from exercise of option, 111 C 568
where note provided that on default of instalment entire balance became payable, failure to demand balance after default as to one instalment does not prevent demand after default of another, 116 C 418
——demand is to be made in reasonable time, 116 C 418
——six weeks *held* to be reasonable, 116 C 418
reception of interest in advance upon a note is prima facie evidence of binding contract to forbear and delay time for payment, 116 C 480
——recovery cannot be had during period for which interest has been paid, 116 C 480
——and agreement to forbear if subsequently made would bind party to do nothing further than he was already bound to do, 116 C 480
provision that presentment for payment must be in reasonable time does not change maturity, but fixes time presentment must be made to charge indorser, 116 C 557
note not stating any due date is payable on demand, 116 C 669
demand note due at once, without demand, 121 C 419

§ 16. Presentment; Demand; Acceptance

mistake in Christian name of drawee in bill of exchange immaterial, if presented to right person, 1 D 11
bill drawn by one partner on firm is in law accepted as soon as drawn, 5 D 511
agreement to accept existing bill is in law an acceptance, 5 D 515
contract of indorser, a conditional one; must be presentment and demand, 2 C 657
demand at specified place is not a condition precedent to recovery, when, 4 C 466
——may avail to relieve defendant from damages and costs, 4 C 470
presentment of copy of lost note *held* sufficient, 5 C 331
"payable at either bank"; no notice at which demand will be made is required, 13 C 342
in suit against acceptor of bill or maker of note, payable generally, not necessary to prove presentment, 13 C 358
——action itself is sufficient demand, 13 C 358
presentment and demand at time and place of payment of note, payable at future day, not necessary to charge maker, 13 C 412
inaccurate description in protest suffices when, 14 C 363
notarial protest is indispensable in foreign bills, 15 C 17
——aliter, on promisory notes and inland bills, 15 C 18
where facts are admitted, question of diligence for court; otherwise for jury, 17 C 441
demand to be made in reasonable time or indorser is discharged, 18 C 361
——what is "reasonable time," 18 C 361
——effect of understanding of parties, 31 C 273
——giving security and agreeing to pay interest, 45 C 253
formal demand waived, when, 18 C 373
indorser liable under money counts, to indorsee who paid under promise of indemnity, without demand on maker, 21 C 406
demand generally required on day note falls due, 22 C 214
——excused, if reasonable diligence is shown, 22 C 214
——excused by any inevitable or unavoidable accident not attributable to fault of holder, provided he make presentment as soon as he is able, 22 C 214
law as to negligence in presenting note or bill examined and applied, 22 C 220
public mail is a proper mode for making demand, 22 C 222
——postmaster's mistakes are not attributable to sender, 22 C 223
demand and notice once made enures to subsequent holder, 29 C 347
demand on agent who signed as such without disclosing principal, sufficient, 40 C 32
——though signer ceased to be agent before note was due, 40 C 32
indorsee is the proper party to present note not yet due against insolvent estate, 40 C 163
conditional acceptance of order when condition is satisfied, becomes absolute, 42 C 551
words showing conditional acceptance of order, 44 C 435

——truth or falsity of reasons given for such acceptance, immaterial, 44 C 436
collecting agent must use due diligence in presenting, 44 C 567
——includes what acts, 44 C 565
acceptance of bill may be verbal; not affected by Statute of Frauds, 46 C 90
on an absolute, unqualified guaranty no demand on maker or notice is necessary, 53 C 454, 58 C 376
where note payable on demand, no demand necessary before suit; otherwise where payable a certain time after demand, 65 C 471
——in latter case, between parties, due at once and suit can be brought immediately, 84 C 54
demand where note payable on demand, but provides for interest payable semiannually, 71 C 39
absolute written acceptance cannot be limited by parol agreement, but conditional delivery may be shown, 71 C 742, 93 C 396
presentation of demand note within time directed by indorser is good against him, 74 C 308
——reasonable time is question for jury, 74 C 308
——under prior statute, 75 C 431, 78 C 267
reasonable time for presenting demand note; waiver, 78 C 267
if no funds are placed at bank where payable, interest runs from maturity, without demand, 80 C 61
no presentation and demand necessary when bank where payable holds notes, 83 C 332
"protest" includes all steps necessary to hold indorser, 87 C 248
presentment is not necessary to charge maker, 93 C 216
acceptance admits validity and failure of consideration cannot be shown, 93 C 392
acceptance defined, 94 C 562
——may be informal, by acts or words, 94 C 566
——if conditional, drawee not liable until fulfilment of conditions is established, 94 C 562
presentment for acceptance necessary where bill is forwarded to bank for collection if it is payable at sight or in certain time after uncertain event at sight or demand, 105 C 33
——not necessary, though usual, if payable at certain time unless instructions to do so given or bill is placed in hands of agent to negotiate, 105 C 33
presentment for acceptance must be made within a reasonable time, 105 C 33
presentment of note for payment, while not necessary to charge maker, ordinarily is, to charge indorser, 107 C 269
——exhibition necessary unless not demanded and payment refused on other grounds, 107 C 269
——mere demand of payment not enough, 107 C 269
strict adherence to rules as to presentment and notice of dishonor required to charge indorser, 108 C 489
——whether presentment of demand note where interest payable semiannually had been paid for about three years and then default made was in reasonable time a question of fact, 108 C 489
if note is presented and not paid, it is then and there dishonored despite promise to pay at a future date, 108 C 489
when presentment must be made; rules relating to notes payable at bank, 108 C 492
presentment of nonnegotiable instrument not necessary to charge indorser, 111 C 65
presentment of note for payment where maker has absconded, 111 C 261
——is excused if he cannot be found, 111 C 261
liability of indorser fixed by presentment upon day when option to accelerate is exercised with due notice of dishonor, 111 C 571
where note is payable on demand, action may be brought without previous notice or demand, 113 C 72
provision that presentment for payment of demand note must be in reasonable time does not change maturity, but fixes time presentment must be made to charge indorser, 116 C 557
if demand on maker is required to make guarantor liable, a designation, with sufficient certainty, of a future date when payment is required is sufficient; requirement of payment forthwith unnecessary, 121 C 414
where note made November, 1928, in view of financial conditions, that it was secured by mortgage and held by savings bank, and that there was no default in interest until November, 1933, demand in May, 1934, was not deferred beyond reasonable time, 121 C 414

§ 17. Notice of Dishonor

personal notice required when parties live in same town, 1 C 329, 3 C 489
——otherwise notice by mail is sufficient, 1 C 329
each joint indorser is entitled to notice, 1 C 367
accommodation indorser is entitled to notice, 2 C 126
demand and notice, not excused by maker's known insolvency, 2 C 126, 657
indorsee of overdue note is bound to make demand and give notice, 2 C 419
proof of waiver is equivalent to proof of demand and notice, 2 C 478
demand and notice, not excused because one member of firm making note was also member of firm indorsing, 2 C 654

what is due diligence in making demand and giving notice, 3 C 101, 489
where indorser's address was unknown, notice sent to person having address for direction *held* sufficient, 3 C 489
notice by holder of inland bill or note on day after dishonor is sufficient, 3 C 489
demand and notice by notary is sufficient, 3 C 489
usage of bank at which bill or note is payable, admissible, 3 C 489
no specific form of notice is required, 3 C 495
the notice need not state that holder looks to person notified for payment, 3 C 516
demand and notice is waived by indorser receiving security, as to that particular indorsement, 5 C 180
notice to one partner, is constructive notice to all, 5 C 468
promise by indorser, after dishonor of note, is presumptive evidence of due demand and notice, 7 C 522
guaranty that note should be paid dispenses with demand and notice, 7 C 522
circumstances insufficient to dispense with notice to indorser, 10 C 307
what notice is required in order to charge indorser, 10 C 307
indorser's admission of notice given, admissible, 17 C 441
duties of holder of negotiable note as to notice, 17 C 452
onus of proving notice to indorser is upon holder, 18 C 361
——waiver of notice will not be presumed, 18 C 374
to charge indorser of demand note, demand and notice in reasonable time, is required, 21 C 411
stranger who guaranties note is not entitled to notice of maker's default, 25 C 576
notice affording reasonable information as to identity of bill, sufficient, 29 C 57
——mistaken description, if not misleading is immaterial, 29 C 59
demand and notice once made enures to subsequent holder, 29 C 347
notice by collecting agent misinformed, sent to wrong place after due diligence, sufficient, 31 C 296
holder not bound to impart his knowledge of indorser's residence to collecting agent, 31 C 299
——aliter, if such agent be mere clerk or servant, 31 C 299
due diligence involves no prior precautions, 31 C 300
presumption as to waiver of demand and notice, on demand note drawing annual interest, 45 C 246
——presumption fortified by indorser taking security, 45 C 253
——by promise to pay after statute maturity of note, 45 C 254
notice sent to wrong address; due diligence used; no second notice required, 48 C 432
notice mailed to indorser's former, and presumably continued, residence, when sufficient, 48 C 434
indorsement with notice of protest waived, is waiver of notice of nonpayment, 50 C 568
indorsement, "we hereby acknowledge the receipt of notice of protest on within note," releases holder from obligation to make demand or give notice of nonpayment, 53 C 453
——"protest" includes all acts necessary to hold indorsers, 53 C 453
on an absolute, unqualified guaranty no demand on maker or notice is necessary, 53 C 454, 58 C 376
notice to the president of a company who is also executor, is notice to latter, 58 C 85
effect of indorsement "notice of protest waived," 65 C 472
judgment in action against indorser, because action brought before notice given, not bar to action brought after notice, 74 C 456
waiver of notice, 78 C 267
necessity of notice to accommodation indorser where maker becomes bankrupt before maturity of note, 79 C 453
failure to give notice of nonpayment of one instalment where note payable in instalments, has no effect upon liability for nonpayment of others, 79 C 626, 103 C 507
notice can be found when payee makes it out, encloses it in stamped envelope and leaves where mail is usually left, 83 C 332, 91 C 674
notice may be given either to all parties or to immediate indorser alone, 87 C 248, 91 C 674
"protest" includes all steps necessary to hold an indorser, 87 C 248
notice may be given to all persons liable or only to principal, 87 C 248
law of State where note payable governs notice to indorsers, 87 C 248
duty of bank holding for collection, 87 C 248
that person does not get his mail is of no importance, 87 C 248
what is due diligence in giving notice of nonpayment, 87 C 249
what is sufficient notice to indorser of dishonor of negotiable paper, 91 C 553
notifying prior indorser by telephone complies with law, 91 C 674
where note is indorsed for collection through several holders, notice of dishonor may be made by each to immediate indorser, 91 C 674
proof of receipt of letter by B containing contents of letter from A is proof of day letter to A was mailed, 91 C 674

holder for collection is agent of owner, 91 C 674
liability of indorsers fixed by notice of dishonor, 91 C 674
under Negotiable Instruments Act omission of note holder to give due notice of dishonor may be waived by indorser, 94 C 495
——promise to pay as constituting, 94 C 495
whether indorser knew note had not been presented for payment, immaterial under the facts, 94 C 495
where holder of note payable in instalments can apply funds in his hand, no duty to notify indorser until it is necessary to look to him, 103 C 507
——and he can be held for subsequent instalments, 103 C 503
when four parties are on note, fact that bank sent out three notices of protest does not prove that one was sent to any given party, 105 C 74
notice of protest properly addressed and mailed is sufficient though miscarried in mails, 108 C 149
law requires strict compliance with rigid rules governing indorser's liabilities; failure to give notice of dishonor, 108 C 489
——when note dishonored on facts was a question of law, 108 C 489
——where maker did not pay on presentment but promised to do so five days later but had then disappeared, note *held* dishonored on day presented, 108 C 489
——presentment of note payable at bank; if money deposited to meet it that day, not dishonored, 108 C 492
notice of nonpayment is sufficient when mailed to deceased indorser at last place of his residence, 111 C 626
——but unless conditions justifying it are pleaded, such notice not sufficient to charge estate, 111 C 626
——listing note among "claims" in Probate Court not an admission of due notice of nonpayment or of liability of estate, 111 C 626
requisites to hold indorser liable, 111 C 631
where note contained waiver of demand, notice of nonpayment and protest, judgment based on failure to give such notice erroneous, 113 C 779
——fact, overlooked at trial, may be claimed in Supreme Court, 113 C 779
judgment against indorser should have included unpaid instalments, as notice of dishonor not required, 116 C 418
time of, when parties reside in different places, 116 C 422
same person may be guarantor and indorser; failure to give him notice of demand and nonpayment will discharge him as indorser but he is still bound as guarantor, 117 C 21
notice of dishonor deposited in mail same day as demand would reach indorser living in same place on following day in ordinary course of mails and was sufficient, 121 C 144
where there is absolute guaranty of note, there is no duty of holder to give guarantor notice of nonpayment, 126 C 457

§ 18. Payment and Discharge

part payment to holder by maker after maturity discharges indorser, K 50
indorsement of receipt of sum paid, prima facie evidence of payment in currency expressed in note, K 425
value of note payable in currency how computed, 2 R 224
payment by payee to assignee revests title in payee without reassignment, 6 C 339
mere indorsement by payee is no payment as to him, of original demand, 8 C 473
holder impairing right of indorsers' indemnity, loses recourse to them, 9 C 261
——by giving time, or taking new security payable at future day, 9 C 264
mere indulgence to maker of demand note does not discharge indorser, 18 C 360
character of payment to plaintiff by agent of prior indorser pending suit is a question for the jury, 27 C 184
payment by indorser in effect a repurchase, 29 C 347
where second of two accommodation indorsers pays, he may recover from first, 40 C 77
note *held* to be paid by funds received by accommodation indorser, 49 C 404
——though no agreement that the funds were to be so applied, 49 C 406
——prior indorsers furnishing the money security, may regard note as paid, 49 C 404
indorsement with notice waived; extension by holder, *held* on facts not to discharge indorser, 50 C 568
——when right still remained in holder to sue on original note at any time, 50 C 568
——so *held* where part payment was made and maker gave new demand note secured by mortgage for balance, 50 C 568
——and *held* that collateral note providing for payment of interest semiannually did not affect, 50 C 568
guarantors paid part in cash, part in new note, depositing old as collateral; *held* whether payment or purchase, a question of fact, 50 C 597
——and *held,* to be payment by guarantor as such, 50 C 600
surety is released only when there is a positive contract by holder to give time to principal, 51 C 40
——not discharged by mere indulgence at will of creditor, 51 C 43

where no evidence of, payment cannot be inferred from indorsement by holder after note is barred by Statute of Limitations, 52 C 186
where money paid to be applied on note, but applied on book account; *held* could not afterwards be indorsed on note, 52 C 186
——to prevent note being barred by Statute of Limitations, 52 C 186
a compromise with debtor "reserving all rights against" surety does not discharge, 58 C 526
——where surety himself had signed compromise, *held* his assent and knowledge would be implied, 58 C 526
extension of time to principal with assent and knowledge of indorser does not discharge, 58 C 526
——same rule applies in making new contract, 58 C 526
an unqualified release of principal releases surety, 58 C 531
payment by one of two joint makers is payment of both, 81 C 143
a third person to protect an indorser advanced the amount due on a note with the understanding as between maker and indorser that it was not a satisfaction; *held* not payment, 81 C 351
——payment question of fact, 81 C 351
temporary advance by stranger to protect indorser *held* not to constitute payment between indorser and maker, 81 C 351
judgment against maker does not release indorser without satisfaction, 89 C 100
payment of serial notes applied in order as they become due, 92 C 135
mistake in surrendering serial notes does not alter rights of parties, 92 C 135
indorser discharged by a valid agreement extending time without his consent by holder and maker, but not by one without consideration, 93 C 567
unsatisfied judgment against maker or indorser no bar to suit against other, 100 C 708, 101 C 699
fact that payee is maker's agent to tender payment to indorsee does not make him latter's agent to accept it, 104 C 302
if payment not made note is dishonored, even though there is no actual refusal to pay, 108 C 492
——when facts undisputed, whether note is dishonored is a question of law, 108 C 492
payment of note to trustee of mortgage securing it, authorized to accept payment and release mortgage, as discharging it, 112 C 223
——rule that one paying note to payee without requiring its production does so at peril of seeing that actual holder gets money not applicable, 112 C 225
indorsements of payment on note sued upon are prima facie evidence of such payments and the date when made, 114 C 200
where account of drawer of check is charged by his express or implied authority with the amount, the check is paid, 115 C 3

§ 19. Bills of Exchange; Drafts; Orders; Checks

on protest of foreign bill interest is the rate of country where drawn, 2 R 405
bona fide indorser cannot recover of acceptor of usurious bill, 1 C 259
custom of collecting bank cannot affect non-assenting third person, 6 C 521
collecting bank is not legally obliged to indorse, 12 C 311
duty of forwarding bank to give what information to collecting bank, 12 C 311
collecting bank is not the agent of forwarding bank, 12 C 313
indorsement of certificate of deposit renders it a bill of exchange, 14 C 383
acceptor's liability to holder not relieved by assigning property to indorser to take up bill, 15 C 205
presumption as to check being put in circulation by drawer, 18 C 358
check binds drawer, even when circulated against his orders, 18 C 358
delay in presenting check is of no avail as a defense, when, 18 C 359
rule of damage as to interest on New York check indorsed and discounted here, 19 C 136
custom of banks not to notice erasure of printed matter, 31 C 170
——does not affect those to whom such custom is unknown, 31 C 170
banking act of Minnesota extends only to paper circulating as money, 33 C 528
——Minnesota bank, liable on draft signed only by president, 33 C 528
holder of check, bound to present within reasonable time, 41 C 347
——reasonable time depends on all the circumstances, 41 C 347
——time for presentment may be expressly or impliedly extended, 41 C 348
written money order, *held* to be a bill of exchange, 46 C 90
after acceptance of bill acceptor cannot set up want of funds of drawer in his hands, 46 C 90
facts held insufficient to put discounter of drafts on inquiry, 46 C 137
order on third person for payment of money becomes operative when, 68 C 541
order for $1000 and whatever else may be due at completion of contract includes money due for extra work, 76 C 483
agreement between drawer of draft and bank relevant as to good faith, 82 C 24

looking to acceptor and not drawer is contrary to custom, 82 C 24
liability of bank for collecting on draft secured by forged bill of lading, 82 C 227
cannot affect liability by attempt to revoke order already accepted, 83 C 520
check properly delivered, though drawer was to substitute another for it, 83 C 526
—imports consideration, 83 C 528
nonnegotiable bill of exchange not affected by Negotiable Instruments Act, 86 C 511
bill of exchange not an assignment of debt owed by person on whom drawn to drawer, 86 C 513
order to pay to a particular person to be charged to account of drawer is nonnegotiable, 93 C 391
——acceptance of an order, its effect, consideration and sufficiency of complaint, 93 C 391
to recover on order drawee must show fund on which drawn existed, and that order accepted unconditionally or on condition fulfilled, 94 C 562
order of builder on owner made on last sum due is of no value if nothing is due, 94 C 562
——acceptance must be more than physical possession, 94 C 562
bank, which discounts draft, with bill of lading for goods sold attached, and receives money, not liable, in absence of bad faith, for seller's default as to agreement, 95 C 300
order to pay builder certain sum from proceeds of mortgage loan was a nonnegotiable bill of exchange; terms not variable by parol evidence, 102 C 558
——where owner absconded, mortgagee foreclosed and completed building, provision that order be due when building is completed was fulfilled, 102 C 558
trade acceptance to cover possible freight allowance in sale of goods; *held* to create real obligation, 104 C 551
bank receiving commercial paper for presentment, acceptance and collection, governed by law, customs and usages of its locality, 105 C 33
where bank receives bill of exchange for presentment and acceptance, when presentment for acceptance is required, 105 C 33
——if necessary must be made in reasonable time, 105 C 33
——where draft payable thirty days after arrival of car, with bill of lading, is forwarded with directions to deliver document "upon" acceptance of draft payable thirty days after arrival of car, effect of immediate delivery of document under local custom, 105 C 33
——right of bank to take back bill of lading as security for loan from consignee as against stoppage in transit, 105 C 33
——where directions to bank used word "arrival" without mention of car, court held it to mean arrival of draft and similar result was reached, 105 C 48
drawer of check not discharged by failure to cash it within reasonable time, 110 C 397
——only discharged to extent of loss due to delay, 110 C 397
check or draft does not itself constitute payment, 110 C 397
——in absence of circumstances showing this to be intent of parties, 110 C 397
definition of check, 110 C 399
order by owner of building drawn on mortgagee who had made building loan with stated payments and providing for similar payments construed with mortgage, 110 C 564
——last payment to be made "when job is completed" *held* to mean completed by the owner, and he not having done this, amount never came due, 110 C 564
bank *held* not liable for accepting for deposit checks indorsed by plaintiff's manager and used for certain purposes contrary to instructions were plaintiff from previous similar transactions, knew or should have known its funds were being used for such purposes, 110 C 635
sight draft against payment is bill of exchange for immediate collection of money; drawee entitled to notice and demand; need not have money at bank until notified, 111 C 709
a draft or check does not operate as an assignment of the fund on which drawn, 115 C 2
deposit of check or draft in bank subject to charging it back if dishonored to depositor; right regarded merely that of indorsee against indorser and not inconsistent with ownership by bank, 117 C 407
bank receiving for collection draft with bill of lading attached, under instructions to deliver latter only on payment of draft, is liable in conversion for surrendering bill without collecting draft, 117 C 472
rule that note or check is not to be regarded as payment of debt, rests upon presumed intention, 118 C 593
——basis is that one simple executory contract does not extinguish another, 118 C 593
——presumption is that it was intended by the parties as no more than conditional payment, 118 C 595
in absence of special agreement, giving of draft by debtor to his creditor does not discharge debt until draft is paid, 121 C 309
——is merely means adopted to enable creditor to obtain payment and evidences indebtedness, 121 C 309

——where insurance company drew draft on itself to settle claim payable to claimant and his attorneys and draft was indorsed by payees and deposited in a bank, claim not paid by company, 121 C 309

——principle that where negotiable paper has been transferred to bona fide indorsee for value no garnishable debt by maker remains, is not applicable, 121 C 309

draft by bank on another bank is check within terms of negotiable instruments law, 122 C 170

right of bank which pays check on which there is forged indorsement of payee's name against bank which presented check to it, 123 C 616 and see BANKS AND BANKING

where payee named in check not already known to maker or particularly identified by check by some designation, maker is held to have intended to make it payable to person before him or to person writing at other end of line, 126 C 179

——intention of drawer does not depend on actual existence or nonexistence of a person of the name inserted as payee, 126 C 179

where drawer has dealings with imposter, and check is intended for person with whom drawer is dealing, payment by bank to imposter or on his indorsement will be binding on depositor, 126 C 180

——as between two innocent persons, one whose act was cause of loss should bear consequences, 126 C 180

indorsement of check by person to whom actually issued and by whom drawer intended that money should be received is not forgery though that person is acting under fictitious name, especially if not really impersonating another, 126 C 180

——indorsements of checks made payable by State and sent to nonexistent person, not forgeries, but vested title in bank cashing them, which had right to collect from drawee bank, 126 C 180

sending check to payee by mail constitutes delivery if payee so directs or requests, 126 C 184

statute that check does not operate as assignment of funds and that bank not liable to holder unless it accepts or certifies check, 128 C 476

——controls liability of bank to holder, and any common-law right of latter to recover as third party beneficiary supplanted, 128 C 476

——but check in connection with proof of other circumstances may operate as assignment vesting in holder exclusive claim to fund, 128 C 476

——check drawn by trustee in bankruptcy to pay a creditor's dividend not within this principle, 128 C 476

no implied acceptance by bank of check, which is a bill of exchange, unless in writing signifying drawee's assent, 128 C 476

in absence of special agreement to contrary, check is not payment and debt for which it is given is not discharged until check is paid, 129 C 655

when buyer makes purchase for cash but gives check for purchase price, check constitutes merely conditional payment which becomes absolute only when it is honored; until then title does not pass to purchaser, 129 C 655

——rule one of "practical necessity" rather than of logic, 129 C 658

§ 20. Actions

§ 21. ——In General

note indorsed, to be void if deed is given, may be sued as a note for money, unless deed is given, 1 R 497

holder of bill cannot resort to indebitatus assumpsit, 2 C 435

suit for interest due only, should not include demand for principal; no jurisdiction in Superior Court, 4 C 257

defeasance by payee of an assigned, nonnegotiable note for fraudulent purposes, no bar to suit on note, 7 C 407

to avoid circuity of action one may recover more than he gave, when, 7 C 408

no recovery on original demand while bill is outstanding in hands of stranger, 8 C 473

action of payee is not sustainable after indorsement over, 9 C 94

joint maker and also payee cannot sue his comakers, 14 C 237

trover lies for note given as a deposit, on refusal to redeliver, 32 C 563

——assumpsit would not lie without what proof, 32 C 563

suit may be had on lost note without a resort to equity, 34 C 546

——court of law can require plaintiff to give bond of indemnity, 34 C 546

assignee of check held by stakeholder on horse race, cannot recover, 36 C 463

note of third person, accepted by creditor as payment, 37 C 167

——maker can recover of debtor as for money paid, when, 37 C 167

where plaintiff would, if he recover, be liable to refund same amount to defendant, he cannot recover, 49 C 408

pledgor of collateral note may foreclose mortgage securing it, 50 C 597

——court would require holder of note to be made party before decree, 50 C 598

——if note is returned to pledgor, holder need not be made a party, 50 C 598

joint notes secured by mortgage on two pieces of land, 51 C 329

——equities as between makers; order in which land must bear burden, 51 C 336

Statute of Limitations runs against note from date, 52 C 434
——regular payment of interest by purchaser of equity in mortgaged premises does not prevent, as against original mortgagor, 52 C 434
demand notes may be sued on at once, 52 C 434
——notwithstanding statute de note unpaid for four months, 52 C 434
facts *held* not to constitute waiver of Statute of Frauds, 52 C 475
——what might constitute, 52 C 475
bill of exchange made payable and accepted in New York; New York laws applicable to suit to recover on, 54 C 400, 401
indorser who merely sells note through indorsee for benefit of maker, cannot recover of maker under New York law, unless he gave value for the note, 54 C 413
cannot join maker and guarantor when note has been merged in a valid judgment against maker, 55 C 444
may set off amount paid on note against claim of principal, 58 C 22
——though suit is brought by trustee in insolvency, 58 C 22
interest paid in advance is not recoverable though principal be paid before period has expired, 63 C 83
defense of Statute of Limitations to notes due on demand or time certain after demand, 65 C 466
defense of Statute of Limitations in action of real owner of stolen bond, 82 C 333
who is real as well as nominal party plaintiff in a suit on note, 82 C 585
interest allowed on nonnegotiable note, 82 C 618
no recovery on demand note if no interest paid in twenty years, 84 C 54
can sue at once on a demand note; Statute of Limitations begins to run at once, 84 C 54
erasure of indorsement of intermediate holder unimportant in suit on protested note, 87 C 248
all persons severally or immediately liable on note can be joined, 89 C 100
no recovery on note not to be paid unless car received, 90 C 481
taking time note prevents action for debt before it matures, 92 C 262
equity may reform if indorsee claims his indorsement absolute instead of without recourse, 92 C 590
money paid on forged note not recoverable if due from payer to payee, 92 C 667
provision in note given on conditional sale for retaking property does not preclude action on note, 98 C 736
maker and indorser may be sued jointly or separately, 100 C 708, 101 C 699
——unsatisfied judgment against one no bar to suit against other, 100 C 708, 101 C 699
action on mortgage note may be joined in foreclosure suit at plaintiff's option, 100 C 708
indorser on mortgage note may be sued after deficiency judgment obtained against maker, 100 C 708
where payee is sued by holder as indorser, and surety on bond to release attachment in the suit pays judgment, latter is subrogated to principal's right against maker of note, 101 C 736
——but he may set off note he holds against principal, 101 C 736
right of mortgagee to sue on note despite prior foreclosure decree, 102 C 644
——may do so though deficiency judgment was asked and appointment of appraisers sought, where that was denied because application too late, 102 C 644
where plaintiff entitled to recover, if anything, face of note plus interest, jury's error in omitting interest gives him ground of complaint, but not defendant, 104 C 703
where note is nonnegotiable, defendant cannot require indemnity bond against its appearance in hands of third person, 114 C 6
ordinarily giving of note by debtor suspends remedy on debt until it is due, 114 C 94
——where note was given by third person as collateral security, terms of agreement *held* to imply similar suspension of remedy, 114 C 94
action on note and for damages for fraud inducing purchase does not require return or offer to return note, 116 C 418
where indorsement on demand note waived demand, notice of nonpayment and protest, Statute of Limitations runs from execution and delivery of note, 116 C 557
——action would be barred in six years, 116 C 557
when parties compromise and fairly agree as to amount due, debtor executes and creditor accepts note therefor, it is binding on them and maker, when sued on it, cannot utilize defenses which would have been available in suit on which compromise was founded, 119 C 681
order that judgment be entered for defendant in suit on note, upon his transferring to plaintiff his interest in certain real estate, as per agreement, sustained, 120 C 184
plaintiff entitled to recover against K on note signed by K Co., Trustee by K President, where K was entity described in signature, 126 C 555

§ 22. ——Pleading

if note declared on be lost, it must be so alleged, 2 R 144

"due A $100 on demand," how declared on, 5 D 337
precise day of demand or notice need not be alleged, 2 C 478
plaintiff may declare in words of note, or according to their legal effect, 4 C 246
——note payable "to order of A" means payable to A himself, 4 C 247
no profert is necessary in declaring on, 5 C 331
nonnegotiable notes are specialties; quoad form of action and declaration, 8 C 289
note for blank amount does not support declaration for sum noted on margin, 13 C 279
in action against maker, demand at particular place need not be averred, 13 C 358
may be declared on according to legal effect, 18 C 357
note inadmissible under common counts, against guarantor, 45 C 528
in suit by payee, form in practice book suffices; need not plead execution and delivery, 64 C 86
interpleader between indorsee of note and one who claims by factorizing original debt, 74 C 234
plaintiff need only allege prima facie right; defenses, as Statute of Limitations, are for answer, 77 C 638
nonnegotiable note; need not allege that plaintiff is owner, 82 C 615
allegation that note was "duly protested for nonpayment" covers all the steps, 87 C 248
failure to deny execution and delivery does not permit recovery on forged note, 89 C 592
complaint upon an order, alleging drawing of order and indebtedness of drawer to payee, *held* sufficient as regards consideration, 93 C 391
allegation that note was without consideration as broker's services for which it was given were of no value, is immaterial, 95 C 273
must plead that a note was not properly stamped; effect of failure to stamp, limited, 95 C 562
allegation that maker had possession of note with payee's indorsement, equivalent to allegation that persons with knowledge of such possession had notice that indorsement was for accommodation, 101 C 465
pleading that mortgagee "assumed payment of lumber bill" up to amount of order and "promised to pay amount of order," good against claim of variance, 102 C 558
prayer for deficiency judgment against indorser must be supported by allegations de notice of nonpayment, 102 C 644
allegation that plaintiff is holder of note gives prima facie right to sue, 111 C 626
——if admitted and no special defense pleaded, evidence that plaintiff not holder in due course inadmissible, 111 C 626
form of complaint *held* not adapted to a judgment for contribution by defendant indorsers, 117 C 24
——but susceptible to amendment appropriate to the alternative claim of joint liability and remedy by way of contribution, 117 C 24
where alteration is not apparent on face of note it must be specially pleaded, 128 C 248
——where it is apparent upon its face the instrument should not be admitted until explained, 128 C 248

§ 23. ——Evidence

§ 23(1). Parol Evidence to Affect Instrument

legal import of blank indorsement is not controllable by parol, K 393
——that blank was to permit power of attorney to be written over it, K 393
evidence of parol condition affecting delivery of note, inadmissible, 1 R 87
parol, inadmissible to contradict, vary, or explain a writing, 1 R 260, 2 R 195, 13 C 181, 32 C 67, 58 C 440, 441
meaning of "wholesale factory price" in note, 2 C 74
parol, of conditions on which escrow was to take effect, admissible, 2 C 302
parol, of mistake in written contract, inadmissible in courts of law, 3 C 299
indorsement in blank; guaranty written over it; what evidence admissible, 6 C 315
parol, admissible to show nature and purpose of indorsement, 6 C 521, 24 C 578
parol contract in pursuance of which note was given, is provable by parol, 8 C 6, 32 C 56, 45 C 153, 48 C 160
parol inadmissible to show mistake in law in a writing founded on such mistake, 9 C 99
parol admissible to explain latent ambiguity, 9 C 274
parol admissible to rebut contract implied from blank indorsement of negotiable or nonnegotiable notes, 11 C 212, 16 C 224
premium note to be construed with reference to company's charter and by-laws, 22 C 143
agreement that note should be paid in labor, admissible against assignee for what purpose, 23 C 79
——assignee secured by mortgage is unaffected by same, as far as executory, 23 C 79
guaranty of one day note by stranger is open to parol as to time guaranty was to cover, 25 C 576
——jury may infer actual contract from circumstances proved, 25 C 576
fraudulent representations to accommodation indorser, inadmissible in suit by bona fide holder, 27 C 383
all previous parol negotiations are resolved into the written agreement, 32 C 56

note given by Shaker Society signed "Zelotes Terry," 35 C 131
——parol admissible, that such was the business name of society, 35 C 131
——note signed "Zelotes Terry, Trustee," may be shown to be note of society, 35 C 132
in suit by holder of accommodation note against maker, original agreement and holder's assent thereto may be proved by parol, 35 C 373
parol, inadmissible to vary contract implied from ordinary indorsement, 38 C 15
four cases in which antecedent agreement may be shown by parol, between indorser and indorsee, 38 C 18
——first, relation of principal and agent, 38 C 18
——second, that note was indorsed for special purpose and in trust, 38 C 18
——third, relation of principal and surety and that indorsement was for accommodation, 38 C 18
——fourth, equity arising from antecedent transaction, 38 C 18
antecedent agreement equivalent to restricting signature to accommodation indorser, provable by parol, 39 C 89
——otherwise, as to subsequent agreement to same effect, 39 C 89
parol admissible to prove consideration for written order, none being expressed, 44 C 262
——also to prove that it had not been paid, 44 C 262
ostensible guarantor cannot be proved maker by parol, 45 C 528
——nor that he made verbal promise at the time to pay, 45 C 528
parol, of agreement prior to execution of note, and contradicting it, inadmissible, 46 C 499
indorsement of accommodation note in blank; indorsement of payee above first indorser's name, 46 C 561
——parol evidence restricting indorsement inadmissible against holder without notice, 46 C 561
parol, admissible as between the parties to note to show their true relation, 48 C 160
evidence of oral contract in conflict with written guaranty inadmissible, 50 C 10
——though claimed to prove waiver of condition in guaranty, 50 C 10
——or to estop guarantor from insisting on condition, 50 C 10
that the indorser in the name of insurance company really intended to assume obligation personally, *held* inadmissible, 50 C 167
conversation between mortgagor and purchaser of equity as to time of payment of interest on mortgage notes inadmissible against mortgagee, 54 C 24
——as the notes and mortgage were unambiguous on that point, 54 C 24
parol evidence of terms of delivery of note are admissible, 54 C 250
parol agreement to vary note for an annuity *held* inadmissible, 58 C 439
import of contract of blank indorsement given it by statute cannot be varied by parol, 60 C 410
parol admissible to show true relation between several parties bound by written obligation, 62 C 459
——facts thus shown are not a part of the contract but wholly collateral, 62 C 459
parol evidence cannot limit absolute written acceptance of bill of exchange, 71 C 742
if court requires special contract of indorsement to be written into blank indorsement on note pleaded, proof is thereby restricted, 73 C 104
obligation of indorser cannot be varied by parol evidence, 79 C 626, 97 C 315
understanding that absolute indorsement was to be without recourse cannot be shown by parol, 92 C 592
——proper remedy, 92 C 593
oral evidence not admissible to show "accepted, payable when plastering is done" meant done by a particular person, 93 C 391
parol evidence admissible to vary nonnegotiable bill of exchange, 93 C 391
parol evidence admissible to show whether one who signed his own name to a note did it in representative capacity, 98 C 787
order to pay builder certain sum from proceeds of mortgage loan was a nonnegotiable bill of exchange; terms not variable by parol evidence, 102 C 558
nonnegotiable bill of exchange cannot be varied by parol after it comes into hands of payee, 102 C 560
terms of conditional sale contract and promissory notes not to be varied by proof of agreement between vendee and vendor's agent, 104 C 302

§ 23(2). Miscellaneous

indorsment of receipt of sum paid is prima facie evidence of payment in currency expressed in note, K 425
evidence relevant under defense of fraud, 1 C 367
agreement made at time of indorsement, when admissible, 1 C 390
usage of bank where bill or note is payable as to demand and notice, admissible, 3 C 489
secondary evidence on loss of bill or note, 5 C 331
proof of denomination of bank bills must be given as laid, 8 C 369

——if declaration aver a certain amount only, proof of any bills, sufficient, 8 C 369
indorsement by payee of note, of sum of money thereon, furnishes no presumption as to what time thereafter it was negotiated, 10 C 31
expression "for value received" raises presumption of legal consideration, rebuttable by proof, 10 C 484
burden of proof not on party claiming under altered writing, when, 11 C 531
——jury to determine whether the alteration makes instrument void, 11 C 531
proof of execution by surety is equivalent to admission that principal executed it in action against surety, 13 C 412
presumption as to consideration paid each of two joint makers, 17 C 97
indorser's admission of notice given, admissible, though notice is not shown to have been given in season, 17 C 441
question of due diligence on proved or conceded facts, is one of law, 17 C 441
——for the jury, when facts are disputed, 17 C 441
admissions of deceased that he obtained note by fraud, inadmissible against his indorsee, 18 C 152
——unless his knowledge of the fraud is shown, 18 C 152
onus of proving due notice to indorser is upon holder, 18 C 362
nonnegotiable note admissible under money counts, as between original parties, 19 C 578
averments of due presentment and notice, supported by evidence of excuse or of waiver, 22 C 213
whether holder can rely on incidents of intermediate title without alleging same, quaere, 25 C 118
——such evidence properly permitted to go to jury where introduced only to meet matter of defense set up by defendant after plaintiff made out prima facie case, 25 C 118
bill of exchange is evidence against acceptor, of money had and received, in favor of indorsee, 25 C 444
merely suffering protest is not prima facie evidence of insolvency, 26 C 437
statement in protest is evidence that notice was sent, 33 C 95
effect of erasure or alteration on plaintiff's title, a question of fact, 39 C 164
——burden of proof not necessarily on party producing, 39 C 164
——each case depends upon its special circumstances, 39 C 164
whether appearance of instrument shows previous cancellation of stamps, a question of fact, 40 C 328
parol, of consideration and its failure, admissible against assignee of order for goods, 44 C 262
conditional acceptance of builder's order; contract with builder admissible, when, 44 C 435
holder may state whether he had any suspicion that maker could impeach note, 47 C 21
indorsement by holder of payment of interest on note barred by Statute of Limitations is regarded as an entry in holder's interest, 52 C 186
——and where there was no evidence of payment, *held* payment could not be inferred from such indorsement, 52 C 186
possession of note by payee is prima facie evidence of delivery, 54 C 251
whether certain notes made by one partner and indorsed by the other were firm notes or not, is a question of fact, 54 C 269
plaintiff presenting drafts duly drawn and accepted establishes a prima facie case, 54 C 358
——though drafts are for accommodation, 54 C 358
burden of proof on maker claiming fraud, 63 C 64
the taking of interest in advance, is prima facie evidence of agreement to forbear collection, during the period for which the interest is taken, 63 C 83
attempt to negotiate note at once and with large bonus, as evidence of fraud, 71 C 61
facts showing want of notice must be proved, 71 C 668
deposit of note as evidence of indorsement, 76 C 126
defendant may show want of consideration for note, if answer puts it in issue, though admitting allegation of promise to pay for value received, 76 C 128
possession as evidence of ownership, 76 C 132
evidence of purchase in accordance with usage of trade as evidence of purchase without notice, 78 C 184
statute imposing burden to prove want of notice of fraud or illegality on holder is valid, 79 C 348
pleading that note was "by the indorsement of the defendant transferred to plaintiff" and proof of blank indorsement; *held,* not material variance, 81 C 667
evidence admissible to show good faith in drawing and collecting draft, 82 C 24
——arrangements between drawer of drafts and bank acquiring them relevant, 82 C 24
evidence to show one a holder in bad faith, 82 C 333, 91 C 260
inference of fraud as to stolen bond payable to bearer, 82 C 333

can show A owns note to prove bad faith of holder, 82 C 334
burden on holder to show he is one in due course after fraud shown or proof of instrument stolen, 82 C 337, 89 C 128
sufficient evidence to show lack of funds to pay notes when president of bank in which notes are payable testifies to their nonpayment and notes are produced, 83 C 332
sufficient evidence to show sending of notice of dishonor, 83 C 332
presumption of authorized indorsement by corporation, 85 C 147
admission of indorsements means authorized indorsement, 85 C 148
if title of payee and indorser defective, burden on holder to show he holds in due course, 89 C 592, 91 C 263
note as prima facie evidence on foreclosure, 90 C 29
allegation that note was payable to R "attorney and agent" permits oral proof of agency, 91 C 598
presumption that holder is one in due course; burden is on indorser to prove defects, 92 C 707
duly executed note and mortgage is presumed to be valid, 95 C 102
if money loaned with idea of immediate discount, can show that note was not given bank until its maturity, 95 C 562
scope of admissibility of parol evidence as to signer's authority and to show relations between signer and claimed principal, 98 C 788, 789
defense of an accommodation indorser; burden of proof on him, 99 C 683
burden of proof on defendant to show absence or failure of consideration shifts when title of person negotiating note is defective, 102 C 620
note and mortgage on which suit brought are presumed valid till contrary appears, 103 C 657
that name of indorser is on note at time of trial does not establish when it was put there, 105 C 74
many of the presumptions in Negotiable Instruments Law are rebuttable and if put in issue trial court must determine facts, 105 C 74
——as that holder is one in due course, 105 C 78
——that there was a valid delivery, 105 C 78
——that indorsement was made before maturity, 105 C 78
——that ownership is presumed from possession, 105 C 78
burden of proving consideration, 106 C 147
effect of provision shifting burden of proof where title of some person negotiating instrument has been shown to be defective, 111 C 178
——does not apply in actions of conversion, replevin, etc., 111 C 178
under allegation of presentment for payment, facts excusing presentment may be shown, 111 C 265
burden on one claiming by assignment note paid by indorser, to prove he was genuine honest owner, 111 C 662
——claim of executor to have note assigned to himself as part of his share of estate of indorser *held* not proved, 111 C 662
the loss of a note does not alter rights of owner but merely makes secondary evidence necessary and proper, 114 C 1
——where answer admits indebtedness and note, a presumption arises that this condition continued, 114 C 1
allegation that plaintiff is owner and holder of note is sufficient prima facie that he is holder in due course with right of recovery, 118 C 112
——production of note establishes case prima facie against maker, 118 C 112
——latter must then set up and prove facts which limit or change plaintiff's rights, 118 C 112
——as that title of any holder negotiating note was defective, 118 C 112
——rule not applicable in favor of one who became bound on instrument before defective title was acquired, 118 C 112

BILLS OF EXCHANGE

See Bills and Notes § 19

BILLS OF LADING

§ 1. In General
2. Carriers

§ 1. In General

immaterial stipulation as to measurement, 23 C 164
stipulation in bill of lading de measurement of lumber is not a condition precedent to recovery of freight, 25 C 384
construction of bill of lading as bearing on damages in nature of demurrage, 32 C 93

delivery of, *held* a symbolical delivery of the property represented, 57 C 383
right of one who discounts draft to which bill of lading is attached in goods represented by it, 77 C 341
bank taking draft with bill of lading attached is not answerable to drawee for performance of consignor's undertaking; when rule is otherwise, 88 C 415
to seller's order, reserves right of disposition in him, 92 C 419
form of bill of lading may disclose whether intention of seller is to remain owner of goods for all purposes or for sole purpose of securing payment of price, 92 C 425
purchaser must have notice of arrival of bill of lading, 93 C 211
interstate shipments deemed to be under obligation of uniform bill, 97 C 231
interstate shipment governed by federal act and terms of bill as construed by federal courts, 102 C 461, 104 C 479
creditor taking bill as security is bona fide purchaser, 102 C 461
attempt of holder of bill to collect from deliveree not a ratification of misdelivery, 102 C 461
assignment of bill by consignor to one from whom he bought goods on agreement that proceeds collected by assignee would be applied to pay for them is on good consideration, 102 C 461
where seller, named as consignor and consignee in nonnegotiable bill, indorses to order of buyer, bill does not become negotiable nor can seller's right of stoppage in transitu be defeated by transfer of bill to bona fide purchaser, 104 C 479
nonnegotiable bill not transferable free from equities, 104 C 479
draft payable "thirty days after arrival of car"; effect of local custom and usage as justifying bank in releasing bill of lading upon acceptance of draft and before arrival of car, 105 C 33
under Bill of Lading Act, standard of conduct of collecting bank is its honesty and good faith, not its negligence or lack of it, 105 C 33
where bank delivers bill on acceptance of draft and takes it back as security for loan to consignee it gets title good against stoppage in transitu, though goods had not arrived, 105 C 33 and see BANKS AND BANKING
bill of lading with draft attached payable "thirty days after arrival"; *held* due date established by acceptance of draft, not by arrival of shipment, 105 C 43
intent of drawer of bill immaterial except as expressed in its language, 105 C 43
terms of bill of lading not to be read into accompanying draft, 105 C 43
description of "trust receipt" employed in importing trade to secure banks which accept drafts against bills of lading for purchase price of goods imported, 116 C 487
——use in marketing automobiles, 116 C 487
——title of bank to property against importer's creditors or receivers, 116 C 487
liability of bank receiving draft with bill of lading attached to be delivered on payment of draft, when it delivers it without payment, 117 C 472
rights and liabilities of parties to interstate shipment of goods for freight charges under uniform bill of lading, 125 C 241

§ 2. Carriers

signed by master of vessel with owner's consent, renders owner liable to shipper as consignee as well as carrier, 2 C 390
whether forwarding railroad company liable for freight by accepting goods, quaere, 32 C 94
provision in bill of lading, exempting carrier from all negligence, void, 41 C 342
owner and master of vessel is bound by bill of lading as to weight of cargo, as against consignee, 42 C 579
——consignees, if sued for freight, may recoup deficiency in cargo, 42 C 581
open to explanation, as between shipper and shipowner, 42 C 580
——but not where consignees are deceived, and shipper knew or might have known that bill was incorrect, 42 C 581
——in such case, master is responsible to extent of his freight, 42 C 582
complaint alleging contract of common carrier, *held* no variance though bill excepted certain specified injuries where none of the excepted injuries was covered by the negligence charged, 61 C 536
exceptions in bill of lading from injury by "breaking and chafing" *held* not to apply to livestock, 61 C 537
shipper bound by valuation in bill of lading in case of loss, 61 C 543
for horse and colt "value $100," whether value covered both or not is for jury, 61 C 552
is contract and receipt; condition limiting liability may inure to benefit of connecting carrier, 75 C 171
duty of carrier where goods are consigned to fictitious person, 97 C 2
liability of carrier for delivering goods to agent of owner on his fraudulent representation that he is the consignee, 97 C 7
limitation of two years and one day after reasonable time for delivery for bringing action in uniform bill of lading; *held* where action not brought until two years and six months after shipment, it was barred, 97 C 21

——order of interstate commerce commission giving six months after claim disallowed for suit construed to be inapplicable because not retroactive, 97 C 22
——time could be lengthened by a second presentation of claim, 97 C 27
provision in uniform bill of lading placing burden on carrier to disprove negligence where damage comes from defect in goods is valid, 97 C 225
provision de protection of perishable goods does not obviate necessity for due care, 97 C 225
necessity of pleading any provision relied on in defense, 97 C 231
effect of prima facie evidence of receipt of goods, 99 C 129
——cannot bind carrier as to contents of sealed package, 99 C 129
——provision that "contents and condition of contents of package unknown" is reasonable, 99 C 129
——receipt containing this phrase followed by "one box shirts" is not sufficient to show receipt of shirts by carrier, 99 C 129
provision that carrier not liable for damage from defect or vice in property as to which it had burden of proof changes common-law rule, 100 C 262
——but only fixes prima facie rule rebuttable by evidence, 100 C 262
issued by initial carrier, governs entire interstate transportation, 100 C 268
——terms, if applicable and valid, fix duties of all participating carriers, 100 C 268
where bill of lading said "do not ice," terminal carrier not bound to ice car, even though icing might have preserved car of grapes, 100 C 270
bill of lading may put burden of proof de negligence on carrier; at common law burden was on shipper, 100 C 273
if bill is produced by any party designated in statute, carrier is justified in delivering goods, if it has no knowledge of infirmity in title, 102 C 461
production and surrender of bill before delivery of goods; carrier's liability for failure to require it, 102 C 461
liability of initial, intermediate, and terminal carriers, 102 C 461
carrier must plead and prove excuse for misdelivery, 102 C 461
bill not "exhausted" or "spent" through lapse of reasonable time for delivery, 102 C 461
attempt of assignee to collect from person to whom goods delivered by forwarding bill with draft not ratification of delivery preventing suit against carrier, 102 C 461
nature of liability of carrier under federal bill of lading act, 102 C 468
negligence of consignor or holder as preventing his recovery for negligence of carrier in misdelivery, 102 C 468
privilege, but not duty, of carrier to require surrender of bill before delivery; liability for wrongful delivery if it fails to do so, 104 C 342
carrier protected if it requires surrender of bill, 104 C 342

BLASTING

See Negligence § 7; Nuisance

BOARD OF EXAMINERS IN OPTOMETRY

See Optometrists

BOARD OF FINANCE AND CONTROL

See Public Officers § 14

BOARD OF FIRE COMMISSIONERS

See Municipal Corporations § 12

BOARD OF HEALTH

See Public Health

BOARD OF RELIEF

See Taxation § 8

BOATS

collision by vessels under control of owners; trespass the proper remedy, 3 C 68

plaintiff's failure to put up lights is no defense unless it contributed to injury, 16 C 429

damages for collision *held* to include damages for detention, 16 C 430

as between ship in motion and ship at anchor, the former is presumed to be in fault, 39 C 210

——utmost care is incumbent on moving vessel, 39 C 211

——onus to show care on master of moving vessel, 39 C 211

duty of vessel at anchor to leave ample space in channel, 39 C 212

one acting as captain, pilot, and lookout is not proper lookout, 39 C 212

duty of occupant of injured yacht on seeing another drifting down upon it, 95 C 475

reasonable care requires anticipating any storm likely to happen at a certan season although of unusual severity and infrequent occurrence, 95 C 486

duty of owner of barge which has drifted ashore, to prevent damage to a cottage, 95 C 486

if vessel breaks from moorings and drifts against another, burden on owner of former to show drifting was result of inevitable accident or vis major which due care could not have avoided, 126 C 529

where moored vessel breaks loose in storm, even of unprecedented character, burden on owner to prove not only that fact but also that those in charge not negligent, 126 C 529

——to exonerate defendant, act of God must be sole cause of damage, 126 C 534

——fact that no other vessels in cove broke loose from moorings in hurricane except defendant's and that his stern line broke, without evidence that it was in proper condition, sufficient for court to infer negligence, 126 C 529

whether small increase in swing of plaintiff's boat, resulting from giving way of port cleat, changed status from that of vessel moored to one in motion, question of fact, 126 C 529

where inexperienced passenger standing in swordfish pulpit of boat was thrown into sea on entering rough waters of Race, crew was under duty to warn him of danger and boatowner was liable, 129 C 489

BONA FIDE PURCHASERS

See also Bills and Notes § 6; Fraudulent Conveyances § 9

bona fide purchaser from fraudulent vendee will be protected, 39 C 406

——as from an insolvent buying on credit without disclosing his condition, 42 C 327

attaching creditor usually stands as well as a bona fide purchaser without notice, 51 C 458

bona fide purchaser defined, 63 C 142

——it is not enough that he agrees to pay a valuable consideration, he must have actually paid or parted with it before notice, 63 C 142

notice acquired after purchase of no effect; purchaser with notice from bona fide purchaser protected, 65 C 554

notice after contract to purchase, but before price paid, binds purchaser, 68 C 308

bona fide purchase of goods wrongfully obtained gives no right against owner, unless latter is estopped, or guilty of wrong; acquiescence in purchase as ratifying, 73 C 547, 74 C 18

definition, 76 C 520, 79 C 286, 94 C 605

not necessary to have legal title to claim, 81 C 554

adverse claimant must show his right; cannot get aid from bona fide purchaser, 81 C 555

who may be considered a bona fide purchaser, 83 C 581

retention of property by vendor renders sale invalid against subsequent bona fide purchaser without notice, 86 C 373

failure to record mortgage does not always make a subsequent creditor a bona fide purchaser, 89 C 59

purchase of goods from fraudulent owner; imputed knowledge, 91 C 482

bank not bona fide purchaser where stock is pledged for pre-existing debt of officers, as it was without consideration, 94 C 597

particular description of property mortgaged must appear to make it good against bona fide purchaser, 95 C 172

where purchaser relies on notice to terminate lease given by representatives of his grantor he is bound by all equitable considerations which would affect it if they sought its enforcement, 105 C 500

assignee for creditors where no consideration given takes subject to all equities, 105 C 588

retention of possession of property sold invalidates sale as against bona fide purchaser without notice, 105 C 766 and see Sales

mortgagee not bona fide purchaser for value where mortgage given to secure past loans, 112 C 125
bona fide purchaser defined, 113 C 476
——one who buys property subject to recorded lease referring to unrecorded agreement as to rents of which he is charged with notice, is not, 113 C 476
second purchaser without notice acquiring title from first purchaser without notice and bona fide takes all rights of his immediate grantor, 114 C 93
purported bill of sale of truck, with retention of possession by seller C, *held* in reality a mortgage and void as to bona fide purchaser from C, 117 C 267
without actual or constructive notice of way of necessity over his property, not charged with it, 117 C 565
meaning of exception in usury statutes of bona fide mortgages, 120 C 671
of stolen property; right to parts added, 121 C 188
where executor assigned stock to conservator's estate, latter or surety had no right to retain it as executor had no right to use assets to cover his wrongdoing and assignee not bona fide purchaser for value, 129 C 576

BONDS

§ 1. In General
2. Official and Statutory Bonds
3. Bonds in Civil Actions
4. Bonds in Criminal Cases
5. Securities; Choses in Action

Note: For bonds in special proceedings see such titles as Attachment § 7; Bail; Bastardy; Executors and Administrators § 14; Guardian and Ward; Replevin § 4; Trusts § 26.

See also Guaranty; Railroads § 10; Suretyship

§ 1. In General

heirs are not liable on bond of ancestor, 1 R 162
when statute prescribes the penalty of bond, court cannot change it, 1 R 260
obligor in bond must perform the condition, if lawful and possible, or forfeit the penalty, 2 R 139
damages for breach extend no further than penalty with interest, 4 D 36, 38 C 324
——though every breach be not thus satisfied, 4 D 36
tender of sum justly due by condition of bond after breach, though less than the penalty, is sufficient, 2 C 659
where terms of bond are not prescribed by statute the conditions may be partly good and partly bad, 15 C 151
neglect to comply with necessary probate orders is a breach of bond of trustee in insolvency, 15 C 152
trustee liable on bond to creditor who has not proved his claim, for not having commissioners appointed; such debt need not be a judgment debt, 15 C 152
judgment not arrested, if one sufficient breach is assigned and proved, 15 C 173
if one breach be properly assigned and proved, plaintiff may show equitable damages on breaches defectively assigned, 15 C 179
bond of trustee in insolvency, how taken and to whom, 17 C 108
——judge of adjoining probate district may continue suit on, when, 17 C 105
bond never takes effect without delivery, 34 C 103
——or on performance of conditions on which it is to be delivered, 34 C 103
bond signed on condition, *held* to be an escrow, 34 C 103
estate of deceased obligor of joint bond cannot be reached in law or equity, 38 C 309
——exceptions when obligors are partners and bond was for benefit of firm, when obligors are joint borrowers, and when instrument is not according to intent or agreement of parties, 38 C 318
——in above exceptions, equity will treat bond as joint and several, 38 C 317
——though such obligor be a mere surety, 38 C 318
interest on probate bond may run from time of demand, 38 C 324
suit on, where obligor dies, is not limited to one year necessarily, 48 C 383
——statute de limitations applicable to intestate estates then apply, 48 C 384
bond may bind obligors though appointment is void, 49 C 84
——estopped from denying the fact by recitals in, 49 C 84
only amount equitably due can be recovered, 53 C 447
bond of putative father to town to save it harmless, *held* not void as opposed to public policy, 54 C 418

——nor for uncertainty as to time or amount, 54 C 418
——*held* not to require a week's notice before suit, 54 C 418
judgment on bond conditioned on performance of duties and accounting sustained by proof of demand and failure to produce, 66 C 63
pleading on joint and several bond that defendants "bound themselves by a writing under seal" sufficient allegation of delivery, 67 C 497
acceptance of bond by municipality implied from taking it into possession, 68 C 495
interest of obligee in bond for deed who has paid nothing, 70 C 277
no bond required of tenant in tail of personal property, 72 C 29
agreement on delivery of bond that principal continue in business *held* to constitute condition subsequent, 72 C 184
allegation of execution includes delivery; if not denied, delivery on condition cannot be shown, 73 C 741
contract may be contained in condition; bond of telephone company given to city for use of latter's poles, 74 C 326
effect of equitable circumstances which make it inequitable to recover full amount due at law, 77 C 79
action on bond covering sale of real estate is cumulative remedy; action for fraud therein lies, 81 C 127
in action of debt on bond, interest may cause damage to exceed penalty, 81 C 252
obligor need not place obligee in funds until request made, 81 C 253
oral request to go on bond binds promisor to indemnify for loss; not within Statute of Frauds, 83 C 686
in suit against promisor, receipt of benefit can be proved, 83 C 686
allegation that clerk took bond admits evidence of his authorization, 83 C 686
one giving bond for deed can give title only to obligee, 88 C 60
release, misjoinder or nonjoinder should be pleaded, 91 C 343
in suit on joint and several bond, if one dies, need not summon in representative, 91 C 343
life tenant must give bond, 91 C 464
provision for forfeiture in bond for deed does not give purchaser option to perform or lose money paid down, 92 C 180
when contractor abandons work, bond for performance broken, 94 C 240
where lost instrument is nonnegotiable, plaintiff seeking to enforce need not give bond against its appearance, 114 C 1
where company issued fidelity bond on employees at bank and receiver on appointment requested its cancelation, but it was not canceled until two days after his appointment, unearned premium did not become due until latter date, 118 C 18
statute providing that recovery on penal bond shall be only such sums as are equitably due and not for whole penalty construed, 124 C 111
——as applied to action on executor's bond does not mean that Superior Court may determine what expenditures have been justifiably made, 124 C 111

§ 2. Official and Statutory Bonds

of deputy sheriff, covers only defaults within time for which deputed at time bond was signed, K 192
bond given by town collector is binding on him, though not by law required, 7 C 549
bond by ferry company to state treasurer does not cover private injuries, 11 C 11
bond of state's attorney covers what moneys, 16 C 528
constable qualified except as to bond is de facto officer, 25 C 282, 46 C 219
bond of officer reappointed annually is an annual bond, 28 C 390
——though appointed to hold until others are appointed in his place, 28 C 391
surety on annual bond is not liable for default after the year, 28 C 392
——though surety be a director, and after default he promised to pay, in ignorance of his rights, 28 C 395
extent of surety's liability on tax collector's bond, 47 C 80
phraseology of sheriff's bond *held* coextensive with his duties, 48 C 136
what is a sufficient compliance with statute de giving of bond by highway petitioners, 48 C 288
to State, of county commissioners *held* to cover act as treasurer of the board, 50 C 582
——action on, can be maintained by the State under statute, 50 C 582
——and surety on, under circumstances, could not make associate commissioners co-defendants, 50 C 582
in a suit on, tax collector cannot set off unpaid salary against taxes not turned over, 51 C 172
——if allowable at all is limited to unpaid salary for period covered by bond in suit only, 51 C 174
statute as to probate bond to be strictly complied with, 65 C 162
attaching goods of A in action against B is breach of constable's bond, 68 C 1
provision for renewal of bond of town treasurer with restriction of liability to one year construed, 90 C 226
obligors on official bond bound only for term of election, 90 C 226

official and statutory bond not readily declared invalid, 91 C 133
State can designate treasurer as proper person to represent it, 95 C 10
bond to secure customers of private bank given to State, not terminated by repeal of statute, 95 C 10
when interest to be added to damages recoverable on penal bond, 95 C 11
bond to be given to treasurer of town under statute should be given to treasurer of city which has been consolidated with town, 110 C 171
statutory bond to be construed in connection with provisions of statute requiring it, 113 C 1
act providing for bond for payment of tax *held* not intended to make suit on bond exclusive remedy, 115 C 554
right of persons for whose special benefit an action on a probate bond is brought is one of direct recovery on bond, enforced independently and not through medium of estate or executor or administrator, 124 C 416
recovery on basis of conservator's failure to inventory property would be supported only on proof of failure to use proper care, 126 C 329

§ 3. Bonds in Civil Actions

after impaneling jury a motion for bond is too late, K 344
discharged by death of plaintiff before judgment for costs, 1 R 259
bondsman on appeal, not discharged by death of appellant before execution and after judgment, 1 R 315
indifferent person to whom writ directed may give bond for prosecution, 1 R 356
bond for prosecution of audita querela does not cover interest on suspended judgment, 1 R 373
given on appeal is not discharged until suit finally determined, 7 C 435
written instrument in form of bond, not under seal, taken by sheriff as security for the liberties of the prison, is valid, 8 C 63
omission of in writ, waived if not pleaded in abatement, 16 C 574
bond on justice appeal may be waived by appellee, 22 C 106
——unless seasonably objected to, omission is waived, 22 C 107
want of bond on appeal from justice, ground of abatement only, 22 C 107
bond not required when a party aggrieved remonstrates against acceptance of report of committee on highway petition, 27 C 414
whether party can impeach truth of statements in recognizance, quaere, 28 C 534
——conduct estopping impeachment, 28 C 534
appellee not bound to enter appeal before suing on bond, 32 C 16
bond on appeal is only for costs, 32 C 17
——costs of justice court are subject to revision on appeal, 32 C 17
repeal of plaintiff's charter; bond for costs by attorney; estopped to set up the nonexistence of company, 33 C 117
bonds of recognizance are seldom drawn up in form at the time taken, 48 C 381
record of bond for prosecution imports absolute verity, 48 C 381
——defendant cannot attack it, for variance from memorandum of it, 48 C 381
record of bond for prosecution, no part of record of the judgment, 48 C 381
——it constitutes per se a complete record, 48 C 382
surety on bond for costs, liable after what steps against principal, 48 C 384
under statute, bond essential in suit by a nonresident; failure renders writ defective, 51 C 327
——waived by defendant voluntarily appearing and submitting to jurisdiction, 51 C 327
——defect not remedied by giving bond in court by first term, 51 C 327
——plea in abatement will lie for defect, 51 C 327
ordinary bond for costs by nonresident not required when replevin bond given, 54 C 48
technical breach of bond resulting in no damage not ground for new trial, 60 C 482
failure to give bond in civil action waived by appearance, 67 C 366
recognizance is a bond; effect of, when given by surety company for costs; meaning of word "inhabitant" in statute as to, 70 C 559
recognizance, how noted in injunction writ; defined, 73 C 538
mistake in memorandum of recognizance of no consequence, if it was properly taken, 74 C 170
noting recognizance, 75 C 650
recognizance is equivalent to bond; form on writ of error, 75 C 651
recognizance good if taken before de facto magistrate, 77 C 184
taking recognizance is a ministerial act, 77 C 184
obligation of B "attorney for" R is B's personal obligation, 78 C 227
breach of condition only question in action to cancel injunction bond, 81 C 715
injunction bond satisfied only by final decision or equivalent, 81 C 715
amount of bond to prosecute within court's discretion, 82 C 2
when bond taken by clerk complies with provision "as court orders," 84 C 458

bond on appeal secures costs if not prosecuted to effect, 84 C 458
judicial notice taken of custom of lower courts regarding bonds, 84 C 458
recognizance taken upon adjournment of hearing before justice, should be taken to the State, 85 C 322
when bond required on mandamus, 90 C 639, 91 C 110
temporary residence in another State does not make one nonresident; bond for costs not required, 92 C 345
statute requiring recognizance for costs applies only to actions where costs are taxable; not applicable to habeas corpus, 113 C 737
judgment upon plea in abatement carries costs, 113 C 770
——hence party specially appearing may ask bond for costs, 113 C 770
effect of bond given to secure jail liberties of prisoner, 116 C 22
——a going-at-large beyond jail limits even for a short time and followed by a return is an escape for which sheriff is liable and a breach of bond, 116 C 22
——any illegality in issue of execution is waived by giving bond, 116 C 22
——effect of discharge in bankruptcy of principal, 116 C 22

§ 4. Bonds in Criminal Cases

for special bail to be taken to party to be benefited, K 12
imprisonment of principal on execution for costs, no discharge of bondsman, 1 R 86
to appear, answer and abide judgment, valid, 1 R 392
cannot be taken by justice on complaint of individual, 1 C 408
when void for improper condition, 1 C 408
to appear before Superior Court and answer complaint, valid, 4 C 78
——"and abide judgment of Superior Court," 4 C 78
what averments sufficient in suit on recognizance, 4 C 77
no defense that it was not called, if party appeared, 7 C 238
given by party charged with secret assault, how construed, 7 C 238
——substantial conformity to statute sufficient, 7 C 238
appearance and plea, insufficient to discharge, when, 7 C 239
if legal in part and unauthorized in part, is void in toto, 7 C 239
bond given to town treasurer in criminal case, is one to the town, 7 C 290
void if embracing more than the offense charged, 9 C 355
suit for breach will not lie until after sitting of court to which bond was taken, 9 C 356
when to be taken to county treasurer, 14 C 209
may be taken by justice on adjourned day of court, 14 C 209
form of, under statute de sureties of the peace, 15 C 151
taken by justice sitting as court of inquiry, must be to state treasurer, 21 C 85
——if within his own jurisdiction, to town treasurer, 21 C 85
on binding over, void unless following statute prescriptions, 21 C 601
——voidable for duress, 21 C 601
each of joint defendants to be bound only for his own appearance, 21 C 601
debt on bond alleging recognizance of joint defendants for joint appearance, bad on demurrer, 21 C 602
for joint appearance of joint defendants is void against surety, 21 C 603
void if taken to official other than statute directs, 25 C 117
"conditioned that A., B., and C. shall appear," construed, 29 C 454
strict technical language not ordinarily expected, 29 C 454
appearance on one charge, no compliance with bond on another charge, 29 C 456
recognizance strictly speaking, is a bond, 32 C 224
——is an obligation of record, 32 C 224
not void because given after mittimus issued after close of term, 36 C 251
no defense that accused is imprisoned in another State, 36 C 252
in declaration on penal bond, no notice or request need be averred, when, 37 C 84
construed so as to conform to other parts of record, 37 C 362
bond *held* sufficient to hold accused on that complaint, 38 C 39
——though insufficient on new information, 38 C 39
surety only liable on avoidance of debtor, 44 C 238
no such avoidance without due diligence by officer, 44 C 238
——conduct *held* not to be due diligence, 44 C 238
no defense, that grand juror was tenant of justice; nor that party assaulted had conferred with justice, 45 C 351
forfeiture of bond previously given for same offense, no defense, 45 C 351
premature call of bond, no defense when, 45 C 352
not void for immaterial variation from statute form, 45 C 353
on criminal appeal, ending "to prosecute his appeal to effect," not void, 48 C 58
recognizance on adjournment of bastardy case not forfeited for refusing to give bond on binding over, 51 C 497

——object of, merely secures attendance of party and submission to judgment, 51 C 499
——defendant's presence in court discharges recognizance, 51 C 499
——under statute defendant may go to jail on binding over, 51 C 498
bond for costs by appellant's attorney in criminal case is not invalidated by statute de bail, 61 C 500
right to chancer exists only where liability is admitted; amount of judgment where right to recover is sole issue, 72 C 607
recognizance given in police court within intendment of statute providing for bond in nonsupport case, 110 C 171
recognizance given to city instead of to treasurer thereof as provided by statute, not invalid, 110 C 171
K arrested by city charged with idleness and cash bail deposited; later charged with felonies but not presented, and bond forfeited for not appearing on idleness charge; *held* city treasurer entitled to money, not state's attorney, 119 C 22

§ 5. Securities; Choses in Action

municipal bonds payable to bearer are negotiable, 29 C 196
transfer of negotiable bonds carries coupon; nature of, and interest on, coupons; effect of their being overdue when taken, 70 C 1, 80 C 58
negotiability of town orders and bonds, 70 C 19
negotiable bonds if taken for preexisting debt, either in payment or as security, are on good consideration, 72 C 576
Adams Express Company bonds of 1907; character and status of, 81 C 529
holder of bond prima facie owner, 82 C 333
owner of a stolen bond must show he had no knowledge or notice of the theft, 82 C 333, 84 C 411
interest on bonds apportioned between principal and income, 87 C 384
warranty that bonds are well secured applies only to time of sale, 90 C 30
right of holder of railroad bond secured by trust deed on foreclosure, 90 C 34
provision in bond binds company that assumes it, 94 C 13
covenant in railroad bond to include it in the security of a later mortgage, binding on railroad's successor and gives an equitable lien, 94 C 13
if debenture bonds provide that they will come under any future mortgage, subsequent execution of a mortgage automatically draws bonds within its protection, 94 C 30
municipal bonds that are taxable, 94 C 543
holder of bonds of corporation, who purchased them of pledgee at less than par, may enforce them for par value, 97 C 584
proceeds of municipal bonds specifying use of money for permanent pavement of certain kind cannot be diverted to other use, 103 C 566
no presumption that stock, as distinguished from bonds of a going concern, has a value of par, 104 C 74
federal, state and municipal bonds regarded as tangible personalty, 105 C 192
statute restricting municipal bonded indebtedness construed, 107 C 610
municipal "bonds," as distinguished from mere temporary borrowings, defined, 107 C 610
——"serial notes" *held* to come within phrase, 107 C 610
notice of election must be given within time prescribed by charter; bond issue authorized where notice is late is absolutely void, 108 C 145
as regards bonds, maxim mobilia sequuntur personam applies and State where decedent resides at death may impose succession tax upon them though they are located elsewhere, 118 C 233
——same principle applies to transfers intended to take effect in possession or enjoyment at or after death, 118 C 233
precedents as to right of bondholders to secure from corporation names of fellow bondholders are few and inconclusive, 120 C 331
taxpayers' suit for reimbursement from board of sewer commissioners for sewers paid from general funds of town for interest and retirement of sewer bonds and to build lateral connections with system, 123 C 572 and see Sewers
right of trustee of mortgage on which it issued bonds, to deposit coupons, which it paid from its own funds on default of mortgagor without giving notice to bondholders, with reorganization committee and share in distribution of assets, 123 C 591

BOOK DEBT

See Limitation of Actions § 3; Andrews and Fowler, Maltbie and Townshend Digests

BOROUGH COURTS

See Municipal Courts

BOUNDARIES

§ 1. In General
2. Location
3. Evidence

See also Adjoining Landowners; Adverse Possession; Deeds § 8; Evidence § 76; Fences; Highways; Title and Ownership; Waters

§ 1. In General

equity will not interfere to settle disputed boundaries, 26 C 241

commission to ascertain, 31 C 440

lost boundary, defined, 31 C 442

change of boundary by shifting of creek a subject of relief, 31 C 443

——establishment of artificial bound by committee, 31 C 443

——acquiescence in change made for fifteen years with knowledge bars relief, 31 C 443

whether general committee oath is sufficient for committee to establish lost boundaries, quaere, 33 C 152

——objection to its sufficiency waived by party's conduct, 33 C 152

committee to establish boundaries need not report facts; only their conclusions, 33 C 154

on bill to establish lost boundaries, question of loss is properly referred, with others, to committee, 35 C 118

remedy under statute de lost boundaries applies to ordinary monuments marking the line; is not a proceeding to try title to land, 35 C 119

Supreme Court may decide whether facts justify committee's report, 35 C 120

committee's finding on boundaries is not conclusive as to title, 52 C 23

——merely restores lost boundary, 52 C 31

——conclusive de location of stone wall which parties agree was boundary, 52 C 32

courts act by established equity jurisdiction, 52 C 32

action of committee de town boundaries under statute accepted and recorded is final and cannot be revised except for fraud or misconduct, 52 C 180

committee under statute is a special statutory committee, 52 C 180

whether court of equity can establish boundaries in respect to easement in seashore, quaere, 52 C 429

——courts have incidentally power to ascertain boundaries in redressing or preventing wrongs, 52 C 430

agreement as to, and acquiescence in, line for fifteen years established it, 64 C 421

committee employing agent of party to assist in fixing lost boundary prima facie sufficient ground to reject report, 67 C 345

surveyor employed to fix boundary to be as disinterested as the committee employing him, 67 C 345

acquiescence in line where deed is ambiguous as creating estoppel, 69 C 15

conduct of parties as determining, 77 C 578

selectmen locating lost boundary act as administrative board, 83 C 101

selectmen must comply strictly with statute in boundary matters, 84 C 646

lost boundary question of fact; committee finding final when, 87 C 70

court, before appointing committee, need not find that boundary was lost, 87 C 70

that parties cannot agree on lost boundary of no significance if committee finds that boundary is not lost, 87 C 70

if boundary not lost, committee should not establish it, 87 C 71

agreement to arbitrate a boundary not a sale of land, 87 C 678

fraud in stating dimensions actionable even if boundary is pointed out, 88 C 651

where boundaries given by adjacent land, whether one claim of title or another included lot in suit is question of fact, 112 C 11

on finding, defendant's contention in court below that he had acquired title to disputed strip by adverse possession properly abandoned on appeal, 121 C 350

in boundary case, occasional picking of flowers and fact that one corner of garage was three inches over claimed line did not violate injunction against remaining in possession of small strip of land, 129 C 38

§ 2. Location

"east on harbor at foot of the bank"; jury to say what boundary was meant, 15 C 142

between Connecticut and New York, as determined by original grants and charters, 37 C 599

——islands lying east of said line, adjacent to Connecticut, are within jurisdiction of Connecticut, 37 C 599

——Goose Island is within jurisdiction of Connecticut, 37 C 599

southern boundary of towns on the Sound follows high watermark, 48 C 446

object of joint commission of Connecticut and New York de boundaries was not to change,

but simply to determine where line was, 49 C 335
——presumption that real line has always been as thus determined, 49 C 335, 51 C 65
of bodies of water treated as land; criteria for locating line of vision, 51 C 267
"middle of channel in harbor" does not refer to thread of deepest water; includes space in which ships can and usually do pass, 51 C 271
of flats, below high watermark, mode of determining, 52 C 430
deed of land on the "west side of highway," *held* under circumstances to mean the apparent highway, 54 C 56
old fence, while evidence of, is not per se as a matter of law boundary of highway, 54 C 73
the practical construction by parties is most significant in cases of ambiguous description and is often controlling, 57 C 452
courses and distances yield to fixed monuments, 57 C 453
one piece of land may be a monument to determine the boundary and limit of another, 57 C 453
when boundary line cannot run through all of the known and fixed monuments, some may be disregarded, 57 C 512
——trier may decide which, 57 C 512
deed of land; mistake in supposing lot described was lot staked out; deed reformed, 60 C 185
staking out as determining, 73 C 530, 74 C 374
intent of parties determines ambiguous boundary, 86 C 147
division line on navigable waters of neighboring towns, 89 C 8
"beach" *held* to mean shore at high watermark, 89 C 598
lines on map showing lot locations are boundaries, not course and distances, 93 C 502
in boundaries on a river, in absence of reference to riparian rights, the boundary is the river, 95 C 538
evidence *held* to justify finding of location of boundary line, 100 C 218
boundary by a pond conveys to middle or thread of original stream, in absence of manifest contrary intent, 100 C 475
ambiguous description to be settled by intent of parties, 102 C 52
title to one-foot strip between adjoining owners *held* in defendant where surrounding circumstances indicated such intent, 102 C 52
title to triangular strip between adjoining owners *held* in plaintiffs upon construction of deeds, 102 C 83
stone wall on large tract had no significance as boundary prior to division by common grantor of both parties, 102 C 83
phrase "however otherwise bounded" refers to possible mistakes as to names of adjoining owners, 103 C 285
fence along highway as identifying boundary described in deed, 103 C 332
mutual deeds dividing lot owned in common described land conveyed "or however otherwise bounded and described as of record may appear," construed, 108 C 538
description in deed *held* to prevail over grantor's act in pointing out boundary, 112 C 1
where boundaries are ambiguous grantee may adopt that boundary most favorable to him, 112 C 17
location of boundary line determined by court *held* supported by subordinate facts, 112 C 152
distances in deeds must give way to a boundary or monument, 112 C 363
grantor conveyed strip on which wall of grantee's building encroached, describing new boundary definitely; deed *held* not to include encroachment of foundation underground beyond this line, 113 C 420
words "more or less" intended to cover slight inaccuracy; when nine-inch strip was conveyed, these words not sufficient to support claim for twenty-nine-inch strip, 113 C 420
conveyance of land on which east wall of building stood did not include land on which foundation wall, sloping outward, encroached, 113 C 420
in condemnation of land for highway, boundary line between land taken and abutter as shown on map *held* sufficiently definite, 113 C 651
boundary clearly described as one hundred and thirty-five feet south of street; *held* no room for construction that fence five feet north of line was true boundary, 116 C 440
rule that adjoining property referred to in deed as boundary may be regarded as monument cannot apply to fix boundary where boundary of land referred to is itself uncertain, 116 C 440
——location of latter boundary is very issue between parties, 116 C 440
court properly fixed boundary; appellant's contention that boundary was fixed by conduct of parties as along old hedge and broken fences not sustained, 121 C 350
deed interpreted as to boundary, 123 C 343
boundary found on conflicting evidence sustained, 126 C 19
premises determined not to be within zoned area, 127 C 409
where fence built on one property overhung adjoining land by few inches it was not true boundary line or partition fence, 129 C 635

§ 3. Evidence

doings of freeholders under statute of 1719 prima facie evidence of title, 9 C 451

committee's finding on; extrinsic evidence admissible to show what adjudication embraced, 52 C 33

——member of committee may voluntarily testify de matter decided, 52 C 33

——finding of committee *held* sufficiently broad, 52 C 33

later deed fixing line *held* admissible in favor of prior grantee where first deed left boundary uncertain, though later deed was of adjoining part of the tract and to other parties, 58 C 148

——is an admission against grantor where it gave first grantee more land, 58 C 149

parol testimony to vary description in deed inadmissible in court of law, 61 C 186

no presumption that boundaries on private way go to its middle, 82 C 567

when declaration as to boundaries is admissible, 83 C 537

no presumption of ownership in private passway because of bounding on it, 84 C 429, 87 C 31

act of ownership to prove, 85 C 159

burden of proof in boundary disputes, 85 C 337

boundary determined by other tracts in vicinity, 86 C 282

statement of owner as to boundary, if an opinion, is immaterial, 86 C 393

boundary on railroad presumably goes to middle line of railway, 86 C 585

evidence insufficient to support boundary by ancient deed, 86 C 698

when property is bounded by highway, it is presumed, in absence of contrary evidence, to refer to apparent, traveled highway, and not as it may exist of record or actual survey, 104 C 36

declarations of deceased persons concerning disputed boundaries, when admissible, 105 C 139

title searcher may be asked to locate town boundary on sketch from study of records, 112 C 5

statement of deceased owner of land as to location of boundary is admissible against, but not in support of, his own interests; but where declarant has no interest in premises, his statement is admissible to prove ancient bound, 112 C 152

declaration of previous owner of land in dispute who died before trial as to width of avenue, distance from which fixed boundary, *held* admissible, 116 C 440

declarations as to location of ancient boundaries are hearsay; admissible under what conditions, 118 C 137

boundary dispute; copy of map filed in town clerk's office at time of original conveyance disappeared and only other copy burned in mails; tracing by buyer who was searching title admitted, 123 C 343

an owner is presumed in law to have knowledge of the boundaries of his own land, 124 C 386

owner presumed to know boundaries of own land, 125 C 330

——is competent witness thereto and to occupancy when within personal knowledge, 125 C 330

BOY SCOUTS OF AMERICA

See Taxation § 6

BREACH OF PEACE

justice of peace can bind defendant to good behavior only till next Court of Common Pleas, K 62

unnecessary to prove offense amounting to assault and battery at common law, 29 C 72

original information for breach will not lie in Superior Court, 31 C 466

what is "mocking" within statute, 34 C 279

——"to provoke contention," means what, 34 C 279

no assault or battery necessary, where breach is alleged to be by tumultuous behavior, 75 C 204

threats by accused and acts and words of others admissible, 75 C 204

may occur by any act likely to produce violence, 96 C 622

what constitutes; resistance to lawful arrest, 97 C 138

doing of acts or use of language which under circumstances is calculated to provoke another to acts of immediate violence may constitute; question of fact, 126 C 1

——playing for audition by Catholics of record violently attacking their religion could be found to constitute, 126 C 1

——but house to house canvassing could not, 126 C 7

statute does not define crime of breach of peace but merely specifies certain ways of committing it; it may be committed in other ways, 126 C 5

information charged breach of peace by acts within common-law definition of offense, 126 C 5

BREACH OF PROMISE

defendant may show acts of unchastity of plaintiff concealed from him, also plaintiff's bad reputation for chastity, 2 R 355

where no time is fixed, promise is to be construed to be one to marry on request, 20 C 505

general promise, not supported by proof of promise to marry at time certain, 20 C 505

what evidence supports a general promise of marriage, 20 C 506

promise to marry at time certain does not destroy prior general promise to marry on request, 20 C 507

promise to marry not within Statute of Frauds, 20 C 508

plaintiff's verdict, rarely set aside on ground of excessive damages, 20 C 509

commencement of acquaintance; agency; rebuttal, 23 C 573

marriage contracts are inferred as much from conduct of parties towards each other or from direct evidence of express stipulation between them, 26 C 398

——in absence of direct evidence contracting parties are always presumed to intend what their conduct indicates, 26 C 398

charge on damages upheld, 46 C 607

promise to and relations with married woman admissible on issue of promise to her after divorce; claim for services rendered by plaintiff; cannot recover both for this and for breach of promise; validity of divorce not open to attack; reputation as evidence of chastity; justification of breach, 69 C 651

agreement to marry on certain date does not necessarily supersede prior agreement to marry within reasonable time, 80 C 311

charge on "written contract of marriage," which was antenuptial agreement in nature of marriage settlement, did not mislead jury, 80 C 311

intimacy twenty years before and relations between parties while plaintiff the wife of another admissible, 80 C 531

recovery in action by man for breach of promise does not preclude later suit for reconveyance of land conveyed to defendant on promise to hold it and reconvey it to him on marriage, 110 C 432

——recovery in first suit for this would have been for special damages to be specially pleaded, 110 C 432

BREAKING AND ENTERING WITH VIOLENCE

See Burglary

BRIBERY

defendant, member of board of education, charged with receiving gratuities from coal company from which board has purchased fuel for schools, 121 C 160

——as defendant did not himself make the contracts, he was not within first portion of statute, 121 C 160

——nor within scope of statute penalizing member of board of management "of public or private institution or corporation" for accepting gratuity from one with whom board makes contract, 121 C 160

statute concerning bribery of witness in any "civil or criminal proceeding" is applicable to proceedings for disbarment of attorney, 122 C 635

——unnecessary that thing offered or given is to induce witness to testify falsely, 122 C 635

——if promise or payment was made so that witness would testify more or less favorably than he otherwise would have done, intent to influence within meaning of statute exists, 122 C 635

——offer of payment of $200 to relief worker for testimony before referee and $100 additional for testimony in court was intended to influence witness, 122 C 635

BRIDGES

Note: Cases involving liability for defects in bridges are listed under Highways § 12

when towns liable to build and maintain bridges on turnpike roads, 4 D 198, 1 C 1

toll bridge company required to maintain draw is subject to later act enforcing opening of draw, 4 C 54

corporation's failure to give bonds required by acts of General Assembly did not affect charter for toll-bridge, 7 C 28

state's attorney cannot prosecute complaint praying town to build bridge, 9 C 31

where charter of bridge company is in nature of contract, it cannot be amended to disadvantage of company, 16 C 149, 17 C 40, 454, 18 C 53
effect of acceptance of bridge by state commissioners, 16 C 173
exclusive right to transfer passengers granted bridge company by resolve abolishing ferries became essential part of company's charter, 17 C 79
defendant cannot prove breach of contract to replank bridge, under pleadings, 22 C 289
Legislature acted constitutionally in requiring one town to maintain or build bridge, part of which was in another town, 23 C 415
bridge under statute includes structure itself and abutments necessary to make it accessible and useful; what constitutes bridge in particular case is question of fact, 26 C 578
powers, duties and liabilities of towns de bridges arise solely from statute, 29 C 362
duty of erecting bridges over streams forming state boundary rests on State, 29 C 362
——town vote to accept and pay for such bridge, ultra vires, 29 C 363
——undertaking of town void for want of consideration, 29 C 364
legislative authority to corporation to erect toll bridge does not incidentally give it power to build and rent wharves, 35 C 7
term "bridge" does not include embankments and approaches, within New Haven city charter de repair of bridge crossing railroad track, 39 C 130
contract by town before bridge was built to purchase it on completion, valid; for commissioners to decide whether stock subscribed in corporation building bridge was sufficient, 39 C 337
in ordering bridge to be constructed, common council understood as ordering necessary approaches to it to be made, 42 C 175
"bridge" as used in statute may or may not include its approaches, 44 C 30
——*held* not to include embankment, in statute de bridging boundary stream, 44 C 30
whether "bridge" includes approach must depend on intention with which term used in each particular case, 64 C 568
act providing that "bridge" as used in previous act should "be construed to include the bridge approaches" *held* not intended to operate retroactively, 68 C 17
burden of constructing and maintaining bridges can be imposed by Legislature on such territorial subdivisions as it may deem equitable, 68 C 131
towns not liable for expenses of board charged with care of highway across river in securing legislation transferring maintenance burden to State, 70 C 18
interest of owners in toll bridge as property, 70 C 621
toll bridge is public highway; taking by State; damages where statute excludes value of franchise from consideration, 81 C 56
power to acquire land incidental to construction of bridge, 85 C 498
what is included in word "bridge," 86 C 659, 89 C 325
when power to build bridge implied, 88 C 471
apportionment of expense in reconstruction of bridge, 88 C 471
what is "reconstruction" of bridge, 88 C 471
duty to repair bridge is on town, 100 C 438
the word "bridge" in a statute may or may not include the approaches; depends on the context, 100 C 438
contract by railway company with town to make statutory highway repairs on bridge contemplates future amendment of statute, 101 C 137
——whether obligation contractual or statutory, quaere, 101 C 137
whether contract precluding future statutory regulation would be valid, quaere, 101 C 137
right of abutting owner to erect bridge over street; control by municipality, 104 C 610, 633
——as encroachment on or obstruction to street, 104 C 633
——as "structure" within building code, 104 C 633

BROKERS

§ 1. In General
2. Real Estate Brokers
3. ——In General
4. ——Remuneration
(1) In General
(2) Where Sale Not Consummated
(3) Procuring Cause of Sale
5. Stockbrokers
6. ——In General
7. ——Margin Transactions and Accounts; Pledges

See also Agency; Insurance § 5; Pledge

§ 1. In General

charge that the fact that vendors were brokers was notice that they were selling for others, *held* erroneous, 50 C 274

loan made at request and for the benefit of person may be alleged as made to him, though really made to newly organized corporation, 75 C 155

usual rate paid as evidence to show proper rate of recovery, 75 C 155

when entitled to commission for services in procuring loan; mortgagor must give good title, 75 C 161

rate of compensation in absence of special agreement, 75 C 161, 197

factor cannot make unauthorized sale and convey good title, 90 C 487

a broker employed only to sell certain goods, not a general agent, 101 C 265

——authority limited to finding buyer on principal's terms, 101 C 265

——cannot bind principal by contract or express warranty, 101 C 265

——his information will not raise implied warranty of fitness under statute, 101 C 265

——his knowledge not imputed to principal, 101 C 265

——buyer's ignorance of extent of broker's authority will not enlarge it, 101 C 265

rules as to broker's authority may be varied by custom or usage, 101 C 265

liability of broker who sells goods placed in his hands by one who stole them but represents himself as owner; damages, 103 C 110

no rule forbids broker acting for both parties if they are aware of it, 107 C 242

——condemnation of broker's so doing in charge *held* ground for new trial, 107 C 242

contract by which plaintiff was to receive certain percentage on price of certain utility plants for services rendered in connection with their purchase by defendant construed to apply to plants severably, 110 C 571

——hence where plaintiff rendered no services in connection with purchase of one of them he could not recover percentage of its price, 110 C 571

——relationship was an employment, not a joint adventure, 110 C 571

where broker was to receive commission for procuring return of certain sum in hands of attorney without deduction and final payment was decreased by attorney's fee, commission not earned, 113 C 762

underlying feature of relationship between customer and broker is agency, 115 C 86

whether contract for future delivery is valid or a wagering contract depends upon intention, 115 C 226

——if actual sale and delivery intended at time of contract, it is valid though commodity never delivered and settlement made on basis of difference in price, 115 C 226

——whether contract is a wagering one, usually question of fact, 115 C 226

verdict of jury that defendant's transactions in sugar futures were valid and not wagering contracts properly sustained, 115 C 226

to entitle broker to commission he must prove either that owner had prescribed terms and that he had produced customer ready, able and willing to buy on those terms, or that the customer and owner had reached agreement as to terms and customer was able to buy on those terms, 122 C 473

——in former case he has earned commission though sale fall through, 122 C 481

in negotiations for sale of newspaper, *held* that proposals agreed to by parties at instigation of plaintiff were not understood by them to constitute a final contract but were only basis for contemplated written contract, and as no such contract was consummated plaintiff not entitled to commission, 122 C 473

test of broker's conduct is honesty, good faith and reasonable care and prudence, 125 C 577

§ 2. Real Estate Brokers

§ 3. ——In General

broker cannot represent both buyer and seller without consent of both, 68 C 254, 81 C 570, 95 C 273, 450

——if he does, his memorandum is not admissible in evidence till proved to be true, 79 C 215

written request to broker to find purchaser does not authorize him to sign binding contract of sale, 71 C 401

contract with real estate broker for services not in Statute of Frauds, 76 C 308, 79 C 297

——cannot profit at expense of his principal, 76 C 308, 79 C 297, 81 C 623

damages recoverable if broker betrays his trust, and he forfeits right of commission, 81 C 623

receiver can employ a broker, 91 C 191

contract to sell real estate; agency to sell may be created by parol, 96 C 84

——authority of general agent; if agency is general, description of lands or terms of sale not necessary, 96 C 84

——attorney drawing contract may be agent for both parties; delivery of contract in such a case, 96 C 84

without special authority cannot bind owner by signing contract of sale, 96 C 670

ordinarily owner may revoke agency at any time without liability, 97 C 169
——and sale by owner has this effect, 97 C 169
different remedies available to principal for breach of broker's duty, 99 C 371
knowledge of broker not imputed to principal where he is acting adversely to him, whether in his own interest or that of another, 100 C 39
——where broker employs sub-agent to negotiate purchase with relative of latter and sub-agent surrenders contract to have change made favorable to seller, principal not bound with knowledge of its terms, 100 C 39
under ordinary listing contract, agency not exclusive and may be terminated at will by owner in good faith or by direct sale, 102 C 156
listing of property for sale is offer; becomes contract when purchaser produced, 103 C 708
where buyer's agent misrepresents to him purchase price, and thus makes personal profit, he is liable for difference, 104 C 257
broker may represent both parties if there is full knowledge and assent by both, 107 C 242
information received by real estate agency, in closing transaction for principal, as to giving of second mortgage conclusively imputed to principal, 126 C 137
nature of rights created by general listing of property with broker, 126 C 165

§ 4. ——Remuneration

§ 4(1). In General

agent entitled to proportional commission, on partial payment to vendor, under terms of contract, 5 D 398
not entitled to commissions unless employed; implied contract rebutted by parties' conduct, 39 C 49
is entitled to recover, though employer secretly makes sale at less price than that given him, 65 C 260
plaintiff must prove that defendant so conducted himself that plaintiff believed request had been made for his services or that he rendered them under circumstances indicating that he expected to be paid and defendant accepted them, 68 C 250
broker earns commission when he procures customer ready and willing to purchase on terms accepted by owner, 77 C 12
——effect of agreement to execute second mortgage when due date not specified, 77 C 12
can enforce agreement whereby each party agrees to pay part of commission, 81 C 570
facts on which commission allowed real estate broker, 81 C 570
can recover only on express contract or facts giving rise thereto, 82 C 547
no implied contract by seller for commission if broker was acting for purchaser, 82 C 547
broker for purchaser gets no commission from seller without disclosure, 82 C 548
if vendor at fault, cannot claim broker has not performed his contract, 85 C 383
vendor's acceptance of proposition of purchaser is conclusive in absence of fraud, bad faith, or misconduct, 85 C 383
broker must produce customer ready, able and willing to accept and live up to seller's terms, 85 C 383, 88 C 555, 90 C 434, 93 C 460, 94 C 125, 419, 475
broker's representation *held* not to be fraudulent, 86 C 63
owner need not prepare or present further proposals than those originally submitted, 86 C 392
necessary elements to make real estate broker's contract valid, 88 C 555
commission not earned if property procured has incumbered title, 89 C 134
transference of stock of company to A, who paid a sum necessary to discharge all charges and debts except a mortgage which A assumes, is a sale, 91 C 190
if commission dependent on sale for more than a certain amount, broker must have chance to sell to purchaser at that price, 91 C 249
jury determines if requisites for earning commission fulfilled; burden on broker to prove conditions fulfilled, 91 C 581
interest not always added to amount recovered, 91 C 581
burden on broker to show parties silent as to commission; on defendant to show implied promise modified, 92 C 257
undisclosed agency does not apply if it works injury, 93 C 460
no commission if broker uses method hostile to client, 93 C 460
broker's right to sell not exclusive unless made so unequivocally, 93 C 460
broker cannot benefit by adopting conduct of one who has imposed on his client, 93 C 461
commission earned if seller accepts less price than he limited his broker to, 93 C 461
test is success in making sale or producing one ready, able and willing to buy, 94 C 422
broker acting for both parties cannot recover commission; rule not based on fraud, 95 C 273
as to middleman who brings parties together, 95 C 279

no variance where allegation is that purchaser was to be found at certain sum, and one satisfactory to owner was found, 95 C 448
one who completes a sale except for reducing it to writing has earned commission, 95 C 448
after real estate broker has earned 2 per cent commission, failure to acquiesce in seller's statement that he was paying 1½ per cent is of no significance, 95 C 448
if no obligation is imposed on broker to sell property, but he makes effort to sell it, contract is sustained, 95 C 510
failure of broker to resort to rule of real estate board permitting property to be listed with all other members after thirty days is not inconsistent with finding that he made reasonable efforts to procure purchaser, 95 C 510
broker signing agreement becomes bound by implication to use reasonable efforts to get a purchaser, 95 C 510
broker's efforts, known to the owner, constitute an acceptance of the offer, 95 C 510
what constitutes reasonable effort to sell, 95 C 517
right to commission where owner sells to another than customer, 95 C 517
one employed to sell real estate is broker, though that is not his business; question is, did he perform his agreement, 96 C 303
compensation is based upon entire interest sold; where property owned jointly, 96 C 304
that property sold on Sunday no defense to claim of broker, 96 C 304
writing giving "exclusive sale" of land, signed by owners but not by broker, constitutes contract where he has expended time and money in effort to perform, 97 C 164
"exclusive sale" contract gives broker right to commission if owner sells, 97 C 164
——not so contract giving broker "exclusive agency," 97 C 164
——broker has reasonable time in which to perform, 97 C 164
——agency may be revoked but principal will not thereby be relieved of liability for breach of contract, 97 C 164
finding that commission was never promised is conclusive, 97 C 223
broker only earns commission when he produces customer willing to buy on owner's terms, or, if he proposes conditions, when they are accepted, 97 C 725
——nonsuit is proper where there is no evidence that conditions set forth in writing were fulfilled, 97 C 725
rule permitting broker to represent both parties applies though parties take over negotiations, 98 C 715
——this does not make broker a mere middleman, 98 C 715
cannot recover commission from one party if secretly acting for other also, 98 C 718
fraudulent purchase by broker for himself of property entrusted to him for sale; not entitled to commission and must account for profits, 99 C 370
where defendant made condition of exchange that property he was getting was to be worth $300,000, error not to charge that if this was so, plaintiff could not recover in absence of proof of value, 100 C 680
broker can recover where justified by acts of defendant in believing services had been requested and he renders services and both expect compensation to be paid, 102 C 148
broker earns commission when he secures customer ready, able and willing to purchase on terms satisfactory to owner, 102 C 151, 103 C 693, 111 C 142
where customer agreed to buy provided possession could be delivered in three to ten days and owner refused to agree to this term, broker not entitled to commission, 102 C 556
liability of one who by fraud prevents broker from earning commission by inducing sale to dummy who really acts for customer already secured by broker, 103 C 708
two conditions under which broker may be entitled to commission in absence of express contract, 104 C 28
broker *held* entitled to commission for obtaining for new owners of building a renewal of banker's promise of mortgage loan to previous owners, 104 C 28
verdict for plaintiff to recover commission *held* reasonable, 104 C 297
newspaper advertisement reciting "no agents," inadmissible where published by defendant before plaintiff's claimed employment, 106 C 205
broker has no right to commission in absence of express or implied contract, 106 C 727
where contract gave sole agency until terminated by ninety days notice, indorsement on back giving definite date of expiration *held* to be no part of contract,, 108 C 534
——where owner sold without giving notice, broker entitled to commission, 108 C 534
——under general denial, owner could not prove fraud, mistake or waiver of provision for notice, 108 C 534
variance between selling price of property alleged and price proved *held* waived by failure to object to evidence, 109 C 589
broker who brings about contract of sale except its reduction to writing has earned commission, 111 C 141
owner's right to withdraw listing must be exercised in good faith, and not to deprive broker of commission, 111 C 493
where owner does not fix terms of sale, agent earns commission only when customer has reached agreement with owner, 113 C 545

——if owner fixes terms in advance, commission is earned when broker produces customer ready, able and willing to buy on those terms, 113 C 545
owner may terminate employment at any time before broker has earned commission, 113 C 545
——sale of property by owner has that effect, 113 C 545
broker need not show that an enforceable agreement of sale has been entered into, 113 C 551
in absence of express employment, broker's right to commission for sale rests on rendition of services with expectation that seller will pay and acceptance by seller knowing of this expectation, 121 C 68
upon finding *held* agency of plaintiff not revoked by defendant before he procured customer ready, able and willing to buy on terms required by defendant, 125 C 572
——and plaintiff, by attempting to deal with two purchasers, was not guilty of misconduct or bad faith which would defeat right to commission, 125 C 572
agency not revoked by telephone conversation unless words and conduct of principal reasonably interpreted indicate to agent that former no longer consented to have him act as agent, 125 C 577
breach of duty, but not criminal conspiracy, for broker representing buyer, without knowledge of principal, to agree with broker representing seller to divide commission which latter receives, 126 C 78
principal cannot withdraw from sale of property after broker has produced purchaser able, ready and willing to buy on principal's terms and he has been informed of fact; up to then he can withdraw, 126 C 166
proof required by broker against vendor to recover value of services in absence of express contract, 129 C 174
——broker expected to be paid for services, rendered under such circumstances that vendors knew that he did expect payment, 129 C 172
——whether broker produced a bona fide customer was question of fact, 129 C 172

§ 4(2). Where Sale Not Consummated

purchaser found and sent, but owner sells for same price offered to third person, 39 C 263
——recovery by broker precluded by special terms of contract, 39 C 263
entitled to commission on contract if made, though one party refuses to perform, whether forfeit be in fact paid or not, 43 C 226
——employer estopped to deny forfeit is not an equivalent, 43 C 226
not entitled to commissions on an exchange abandoned by employer, for misrepresentations by other party, 44 C 337
not entitled to commission on future contingent sale not consummated, though vendor retains sum paid to bind the bargain, 62 C 60
broker entitled to commission though owner refuses to consummate sale, 83 C 458, 88 C 555
entitled to commission if purchaser found but vendor refuses to give deed, 85 C 384
does not earn commission where sale fell through because owner refuses to warrant length of frontage, 86 C 392
conversation between owner and customer in absence of broker not admitted, 88 C 555
if owner defeats sale by new conditions, commission earned, 88 C 555
purchaser if ready to buy, need not bind himself legally nor have bill of sale, for broker to get commission, 88 C 555
commission is earned where broker procures customer with whom owner makes contract of sale, though customer later repudiates deal, 96 C 116
refusal of seller to stand by offer of sale and attempt to impose further conditions will not defeat commission, 97 C 204
broker not entitled to commission where wife, owner of one of properties, failed to ratify or assent to proposed exchange, 98 C 97
wrongful refusal of principal to perform contract to exchange real estate; where variances from contract not substantial agent entitled to commission, 100 C 680
where broker negotiated exchange of defendant's property for property really owned by C, but standing in S's name defendant cannot justify failure to perform because broker had represented C as owner, 100 C 680
——nor because there was paper mortgage on land from S to C which would be released, 100 C 680
——nor because mortgage defendant was to give would be held by S, not C, 100 C 680
real estate contract obligated seller to pay broker though title never passed, 101 C 505
where after property listed broker was given written option to sell on certain terms his commission to be paid "on signing of contract" this writing determines subsequent rights, 103 C 693
——though parties disagree as to term of deed, if within time set buyer stated willingness "to take up option on its terms" commission was earned, 103 C 693
——owner could not defeat sale by refusing to convey, 103 C 693
oral listing merged by novation in subsequent written option, 103 C 693

where broker not engaged to sell had only promise made after contracts to sell were executed to pay if sales were completed, broker cannot recover if they were not, 104 C 23

earns commission when he produces customer ready, able and willing to buy on terms prescribed, 111 C 141

——if sale falls through, immaterial whether purchaser was legally bound or not, 111 C 141

——general testimony that understanding had been reached, with no question raised on record as to details of mortgage to be given *held* sufficient to support recovery, 111 C 141

commission earned when customer reaches oral agreement as to terms of sale, 111 C 493

——except when intention was not to consummate contract until written and executed, 111 C 493

§ 4(3). Procuring Cause of Sale

exclusively in province of jury whether contract ultimately concluded for sale of land was effected by procurement of plaintiff, 5 D 390

information given by broker; sale by owner; broker entitled to commission, 36 C 141

——agreement that owner might sell without paying commission, means a sale without broker's procurement, 36 C 143

broker entitled to commission where purchaser was led to begin negotiations through his intervention, 71 C 599

——conduct of owner which will not have effect of relieving him of liability, 71 C 599

——question of whether person is "procuring cause" of sale is one of fact for trier, within certain limitations, 71 C 599

whether or not broker is procuring cause of sale is question of fact, 72 C 585, 75 C 155, 91 C 191, 92 C 610, 93 C 460

commission earned when sale consummated by another person in fraud of broker, 90 C 439

broker may be procuring cause of sale if employer makes sale, 91 C 191

giving selling price or naming commission not material on question of procuring cause of sale, 91 C 191

commission earned if stockholders effect a sale, 91 C 191

no commission where broker failed to get A to purchase, though A did purchase later through another, 93 C 459

if broker does not deal direct with purchaser, he must show latter was induced to negotiate by his efforts, 93 C 460

when Supreme Court can review whether broker was the procuring cause, 93 C 460, 94 C 418, 479

must appear in complaint that broker is procuring cause of sale, 93 C 460

verdict may be set aside if there is no evidence to show broker's employment or that he was procuring cause, 94 C 125

if broker is unsuccessful and another intervenes and completes sale, first gets no commission, 94 C 418

discharge of broker and subsequent sale to his customer, 94 C 422

if two brokers participate in sale, the one who is the procuring cause entitled to commission, 94 C 475

to recover, broker must prove that he was effective procuring cause of sale, 96 C 14

——conclusion of trial court not reviewable unless unsupported by subordinate facts found, 96 C 14

sufficient if owner and customer agree on details, left open by broker, 96 C 305

promise of owner to pay commission if broker will disclose name of possible customer and sale goes through will support action, 97 C 492

——in such case not necessary for broker to prove he was the procuring cause, 97 C 492

purchase from owner by customer of broker, while that relation still exists, entitles broker to commission, 99 C 703

where two or more act, one who is predominating efficient cause of sale entitled to commission, 101 C 553

where plaintiff interested G in property but negotiations broke off and two weeks later G bought through another broker for higher price, judgment for plaintiff erroneous in absence of proof of bad faith, 101 C 553

if broker, acting under agreement for compensation, is procuring cause of sale, mere fact that his agency is not exclusive does not enable principal to avoid payment by effecting sale through another broker, 101 C 710

verdict for broker properly set aside, where no reasonable basis for conclusion that she was the procuring cause of sale, 102 C 156

broker cannot recover where owner sells to prospective customer after negotiations by former are broken off, 102 C 156

——change in mental attitude of purchaser for which broker in no way responsible, 102 C 156

plaintiff *held* procuring cause of sale and entitled to commission, 103 C 486

owner cannot defeat commission where he makes contract himself with customer secured by broker, 103 C 487

employment of broker as exclusive agent does not preclude sale by owner himself; only sale through another agent, 104 C 745

conclusion that plaintiff procuring cause of sale *held* unreasonable, 104 C 747

commission depends on proof of agency and its execution by broker securing customer, 106 C 205
charge to jury must define "procuring cause" and present the relevant facts, 106 C 205
conclusion that plaintiff was procuring cause of sale is one of fact; reviewable only if it violates law, logic or reason, 108 C 142
conclusion that plaintiff was procuring cause of sale *held* correct, 109 C 591
plaintiff called attention of customer to property and he ultimately bought it through direct negotiations with defendant; conclusion that plaintiff was procuring cause of sale upheld, 114 C 713
one whose efforts first interested purchaser was procuring cause of sale though another agency later took buyer to property, quoted him lower price and attended closing of sale, 125 C 274
——fact that plaintiff did not attend closing of sale not of controlling importance, 125 C 280
finding by court as to procuring cause one of fact, 125 C 278
plaintiffs *held* procuring cause of acquisition of lease by defendants, who took lease with knowledge that it was result of services rendered by former, 129 C 468
——even if defendants were misinformed as to nature of proposition offered by plaintiffs, they accepted benefit of services and were obligated to pay for them, 129 C 468

§ 5. Stockbrokers

§ 6. ——In General

custom of broker to debit and credit interest monthly, computing interest on balances, does not necessarily involve usury, 48 C 129
——such custom does not affect contract for purchase and sale of stocks, 48 C 130
sale of stock by broker in violation of terms of trust; if acting without knowledge in good faith, *held* not chargeable, 58 C 351
——if broker has knowledge that it is trust property, he is bound to inquire as to ownership, 58 C 351
——is chargeable with knowledge of rights of heirs where will is on record, 58 C 352
——nil sig. that validity of remainder was in doubt, and no distribution had been made, 58 C 352
——if he knows of violation, he participates in the breach and is chargeable, 58 C 351
——does not affect that stocks were received as security and sold to make good losses, 58 C 351
——property bought to replace trust property sold is trust property, 58 C 353
administratrix leaving registered bonds of deceased signed by her as administratrix with broker for sale may follow proceeds as trust funds, where able to trace funds into hands of trustee in insolvency, 63 C 232
broker's general statements not fraudulent if not intended to deceive; *held,* to be trade talk, 90 C 30
representation that bonds are well secured refers to time of sale only, 90 C 30
where defendant agreed to sell fifty shares of stock, but found he could deliver only forty-five and directed plaintiff to purchase five in market and this was done plaintiff was agent of defendant in purchase, 99 C 169
——acceptance of five shares constituted part performance of contract of sale within Statute of Frauds, 99 C 169
——upon repudiation by plaintiff defendant entitled to recover difference between contract price and market price of forty-five shares, 99 C 173
sale by broker subject to sale or delivery on demand and payment of balance due requires only that broker always have on hand or available sufficient stock to fill contract, 99 C 515
transaction between broker and customer found to be direct purchase from broker, 99 C 519
relation of stockbroker to client defined, 101 C 118
where purchaser orders stock sent to bank "sight draft against payment," broker did not comply by sending it with invoice, 111 C 709
——under order given bank would notify buyer, who did not need to have money at bank to pay for stock on receipt, 111 C 709
——where bank returned stock, buyer's damages are difference between contract price and market price at time of subsequent refusal to deliver, 111 C 709
broker agent of customer in purchasing stock; in advancing money for it broker becomes customer's creditor; in holding stock to secure payment he is customer's pledgee, 112 C 248
——customer need not have actual possession of stock to have title, 112 C 248
——or to be liable for purchase price to broker, 112 C 252
——duty of broker to deliver certificate of stock in reasonable time, 112 C 255
——whether this was done may be question of law and extraordinary market conditions are to be considered, 112 C 255
customer employing broker to deal in particular market gives him authority to deal in accordance with rules and customs of that market, 112 C 252
delay caused by transfer agent for which brokers not responsible cannot make them liable, 112 C 255

requirement that broker exercise reasonable skill and diligence, 113 C 375

elements necessary to constitute embezzlement by broker as agent of customer, 114 C 456

——where he sold stock directly to customer and was not her broker for its purchase, he cannot be guilty of embezzlement, 114 C 456

intent of broker to defraud purchasers by failure to deliver stock *held* inference not supported by evidence, 114 C 456

underlying feature of relation between customer and broker is agency, 115 C 86

——where several persons advanced money to broker to form a pool to purchase and sell stocks, *held* relationship was joint adventure, not agency, 115 C 86

broker accused of embezzlement *held* to have been agent of M who entrusted him with stock, not pledgee, 115 C 306

sale of stock by broker entrusted to him to pledge was unlawful appropriation and established felonious intent, 115 C 306

——intent eventually to account to owner for disposition of stock does not absolve him, 115 C 306

——sale of stock constituted embezzlement though he might later have replaced it, 115 C 312

broker who secured possession of stock by false representations and promises and used it in speculation, *held* guilty of theft by fraud, artifice or device, 115 C 540

§ 7. ——Margin Transactions and Accounts; Pledges

party using technical term to broker is bound by its well-known meaning; to buy "on margin," 48 C 129

not bound to make actual purchase of stocks under a contract to buy on a margin and hold subject to demand, 58 C 509

——enough if broker can procure them on the market and deliver on demand at the agreed price, 58 C 510

——and *held* when price declined no damage done to plaintiff by neglect to make actual purchase, 58 C 510

pledgee of stocks may have them transferred to his own name, 63 C 217

——rights of pledgor preserved, if pledgee has on hand similar stock of equal amount, 63 C 218

one employing broker to deal in a particular market is bound by the custom and usage of that market, 63 C 219

——unless custom or usage is immoral, unlawful, unreasonable, contrary to express agreement, or changes character of undertaking, 63 C 219

custom of brokers, in buying on margin, to rehypothecate stocks will not be disregarded by courts, 63 C 219

as to custom of brokers, to temporarily reduce carryings to amount less than demands of customers, to effect short sales, quaere, 63 C 220

in executing customer's order to buy on margin, acts as his agent, 63 C 222

——title to stocks bought on margin vests at once in customer, 63 C 216

——broker carries stocks as pledgee of customer, 63 C 216

——absence of delivery and re-delivery to broker as pledgee does not affect relation, 63 C 217

——that identical shares bought are not kept separate from other like shares does not destroy pledge, 63 C 218

——power in broker to sub-pledge is impliedly given; is not inconsistent, 63 C 218

customers as pledgors are entitled to redeem stocks and securities purchased by them, 63 C 224

——an assignment in insolvency by broker does not affect this right, 63 C 224

——customer redeeming must reasonably identify securities, 63 C 224

——identification of any certificate as the one actually bought or carried to fulfill order is sufficient, 63 C 225

——where a block of stock is carried sufficient to meet demands of all customers of that stock, each may redeem shares equal to his carrying, 63 C 226

——where identification fails and there is a shortage of any kind of stock, stocks on hand are presumed to be carried for customers, 63 C 227

——and shortage to be from sales of stock owned by firm, in absence of proof, 63 C 227

——each customer may redeem in full if stock is sufficient; if insufficient, then ratably, 63 C 228

burdens on stocks in hands of sub-pledgees, above customers' debit balances, *held* to be averaged among all margin customers including firm, 63 C 229

customer depositing his own stocks as security for margins, which have been rehypothecated without authority, is entitled to have other stock pledged rightfully along with his, first applied to discharge of pledge, 63 C 231

contracts between broker and customer *held* not to appear on face to be gambling contracts, 77 C 507

rule of damages for wrongful sale by broker of stock held in speculative account, 77 C 507, 517

a bona fide contract whereby one gives to another an option to call for stock not then owned by former at a future time and at a certain price, unexceptionable, 77 C 508

essentials of recovery from broker for wrongful sale of stock; acceptance of stock by broker where additional collateral called for; notice of call, 77 C 517
brokerage contract for purchase of stock on margin good if actual purchase made or contemplated; illegal if only difference in market price is to be paid, 84 C 694
broker, who knew that an agent had authority only to invest, cannot sell to him on margin, 89 C 226
——opening account as trustee with broker does not put one on notice, 89 C 226
stock carried in customer's account; ability of broker to deliver; insufficient margin; sale of collateral, 99 C 520
that stock held on usual terms by broker permits inference that customer knew it would be pledged by him, 101 C 118
——abandonment of title of stock by customer is a reviewable question, 101 C 118
——where broker and one of his New York correspondents became insolvent, effect of agreement with customer by which broker caused another correspondent to purchase enough other stock to make deliveries and such delivery was made, 101 C 118
——where result was to leave in correspondent's hands a balance which applied on broker's indebtedness to him, transaction constituted preference as to this balance, 101 C 118
——in purchasing stock, broker is agent of client, 101 C 118
——in advancing money for its purchase, he is creditor, 101 C 118
——in holding stock to secure the advance, he is pledgee, 101 C 118
——he may subpledge and substitute new for old shares, 101 C 118
——but must always be prepared for immediate delivery upon lawful demand, 101 C 118
——such delivery not a preference, though broker be insolvent, 101 C 118
distinct order for stock by customer *held* to be transaction separate from margin account, 101 C 119
broker agent of customer in purchasing stock; in advancing money for it broker becomes customer's creditor; in holding stock to secure payment he is customer's pledgee, 112 C 248
where on oral order, broker purchased stock, entered it in general account and buyer attempted to have bank take it up and finally made payment on account, sufficient part performance to make order enforceable, 113 C 295
damages for wrongful sale of stock is dependent on right of customer to buy other stock within reasonable time, 113 C 366
——reasonable time is question of fact, 113 C 366
damages recoverable for wrongful failure to sell stock of customer, 113 C 366
——duty of customer himself to sell stock does not obtain until he has secured control of it, 113 C 366
——he is under no duty in order to obtain such control to pay broker full purchase price, 113 C 366
——where broker finally turns stock over to plaintiff, damages are to be determined as of that date, 113 C 366
——where broker finally sold some of stock, damages are to be determined as of date of that sale, 113 C 366
agreement by broker with customer to be lenient in time of stress, not too vague to be enforced, 113 C 366
——such agreement construed, 113 C 366
where customer gives order to sell at price which cannot be obtained, broker not liable for failure to sell, 113 C 366
——right of customer on margin to direct what stock shall be sold to pay balance due, 113 C 366
——extends after demand for additional margin is made if broker runs no risk of loss, 113 C 366
agreement to carry along a margin account without specifying definite time means for a reasonable time, 113 C 397
withdrawal by customer of part of proceeds of sale of stock is ratification of the sale, 113 C 397
——estoppel not applicable after parties have made subsequent agreement with knowledge of material facts, 113 C 402
broker may lawfully sell stock in margin account to protect himself, 113 C 401
letters giving broker authority to pledge, sell or otherwise dispose of securities are evidence of power given him rather than transfer of title to him, 115 C 540

BUILDING ASSOCIATIONS

See Corporations; Usury

BUILDING CODE

See Zoning

BUILDING CONTRACTS

See Contracts § 24

BUILDING LINES

See Eminent Domain; Highways; Municipal Corporations § 5

BUILDING RESTRICTIONS

See Deeds § 11; Easements § 7

BURGLARY

a common-law offense; statute only provides a penalty, 1 R 59

statutory; cabin of vessel, a "house or shop" within statute, 1 R 63, 5 D 132

barn unconnected with house is an "outhouse" within statute, 4 C 446

district schoolhouse is not an "outhouse" in which burglary may be committed, 10 C 144

must be charged to have been committed in night season; omission not cured by verdict, 16 C 33

breaking and entering with intent to steal; offense complete without larceny, 24 C 65

banking house is "shop, store, or warehouse," within the statute, 24 C 70

taking of life to prevent burglary justifiable, 31 C 486

building secure at night; found broken in morning; no presumption of law as to time it was entered, 35 C 515

whether building is a subject of burglary is question of fact for jury, 42 C 263

definition of, 43 C 493

entry by night without breaking, for felonious purpose, and breaking out, is burglary, 43 C 493

identity of accused as the criminal to be proved beyond reasonable doubt, 47 C 180

court should notice judicially the time of sunset, 47 C 180

evidence that accused was armed on leaving justifies finding by jury that he was armed at time crime was committed, 47 C 181

light of moon or artificial light sufficient to distinguish features, of no avail to accused, 47 C 182

——there must be daylight sufficient for that purpose, 47 C 182

having possession of burglar's tools in night season; charge of court sustained, 96 C 160, 97 C 261

——several arrested and searched; evidence of articles found *held* competent, 97 C 263

——orders de search; searchers alone competent to testify what was found, 97 C 264

definition of night, 108 C 405

is crime involving moral turpitude, 121 C 678

verdict of guilty sustained by evidence, 123 C 678

if several confederate together to commit burglary and one gets inside without breaking and entering and opens door to confederates, all equally guilty of breaking and entering, 125 C 210

——so rulings de testimony of State that door was forced by screwdriver nil sig., where one of defendants hid in theater and later admitted others, 125 C 210

purpose of statute de breaking and entering with violence, 125 C 210

——where defendants had in their possession implements forbidden by statute they were guilty under it though no force or threats were used, 125 C 211

BUSSES

See Automobile; Carriers § 11; Public Utilities Commission

BY-LAWS

See Banks and Banking; Beneficiary Associations; Corporations § 18; Municipal Corporations § 13; Voluntary Associations

CANCELLATION OF INSTRUMENTS

See Deeds § 14; Fraud § 13; Fraudulent Conveyances § 7; Insurance § 24; Mistake; Reformation of Instruments; Undue Influence

CARNAL KNOWLEDGE

See Criminal Law and Procedure § 21

CARRIERS

§ 1. In General
2. Goods
3. ——Liability for Damage or Loss
4. ——Delivery to and by Carrier; Stoppage in Transit
5. ——Connecting Carriers
6. ——Charges and Liens
7. Passengers
8. ——In General
9. ——Railroads
10. ——Street Railways
11. ——Busses
12. ——Miscellaneous Carriers
13. Employees; Federal Employers' Liability Act

Note: Includes cases involving injuries to passengers on carriers (§ 7), but not injuries to persons or vehicles struck by them, for which see Automobile, Railroads, Street Railways. Cases involving injuries to employees are listed here (§ 13) where they involve the law pertaining to carriers, but under Master and Servant § 3, where they involve the law pertaining thereto.

§ 1. In General

owners of vessel generally engaged in carrying goods for hire, are liable as, 12 C 418
what constitutes a deviation by, 12 C 420
——deviation a question of law, when facts are found, 12 C 421
custom and usage must be long standing and general, to justify a deviation, 12 C 422
definition of, 15 C 543, 24 C 479
what is sufficient averment that defendant is a common carrier, 21 C 570
common hands and crew of vessel are not agents to receive goods, 23 C 604
what is sufficient averment of negligence of, 34 C 154
cannot exempt themselves from all negligence by contract, 41 C 342, 43 C 340, 97 C 225
——American courts pass on the reasonableness of such contracts, 43 C 340
railroad has clear and undoubted right to make reasonable rules for moving trains, 51 C 150
duty of railroad toward shipper or passenger rests entirely upon contract expressed or implied, 51 C 151
definition, duty and liability of common carrier of goods, 73 C 707
what is necessary to constitute public service vehicle, 92 C 583
effect of federal legislation with reference to interstate shipments, 97 C 225
——state courts have jurisdiction but rights are determined by federal law, 97 C 225
——not so matters of remedy, 97 C 225
——burden of proof may be matter of substance, 97 C 225
interstate shipment deemed to be under obligations of uniform bill of lading, 97 C 231
jitneys are subject to regulation by public utilities commission, 97 C 453, 728
interstate shipment of goods is governed by federal laws and rules, 100 C 266
burden of proof de negligence of carrier is on shipper, 100 C 273
——this may be changed by bill of lading, 100 C 273
Congress has pre-empted entire field of interstate commerce; our courts must follow rulings of federal courts, 104 C 728
weight of goods as stated in invoice may be accepted as actual weight, 106 C 372
contract for sale of coal en route from mines *held* to contemplate a single haul; diversion

order to terminal carrier sufficient, 106 C 372
enactment of Congress and rules of interstate commerce commission thereunder substantially the same as those of our public utilities commission concerning insurance requirements of interstate carriers *held* to have superseded the latter and rendered them inoperative, 122 C 276
distinction between private carrier and common carrier is that former enters into contract with each of customers and assumes no obligation to others, while common carrier undertakes to carry for all persons indifferently, 122 C 578
——so where defendant had contracts to transport dresses for limited number of customers and did not undertake to do so for others, it was private contract carrier, 122 C 578
one may be common carrier of particular class of goods; it is his duty to accept goods of that class offered by anyone, without further contract, 122 C 578

§ 2. Goods

§ 3. ——Liability for Damage or Loss

liable for damage from unseaworthiness of vessel, 2 R 316
liable for leak caused by ice, 5 D 416
liable for all losses not caused by act of God or public enemies, 5 D 416, 1 C 491, 21 C 253
owner of vessel is liable for its unseaworthiness, and for master's negligence, 1 C 59
——owner's liability not discharged by special contract between shipper and master, when, 1 C 59
"act of God," includes what, 1 C 491
not liable for damage caused by hidden rock not generally known, 1 C 491
when "act of God" will not excuse, 1 C 492
bill of lading excepting dangers of sea does not vary common-law liability, 12 C 419
goods thrown over to save life, a loss by "dangers of the sea," 12 C 419
——aliter, if done during a deviation, 12 C 420
degree of care required, 13 C 326
liability of, for losses, 15 C 544
liable, if loss is from agency of propelling power, 15 C 544
——for loss by fire on high seas, 15 C 545
liability of, not restricted by public notice known to party under New York laws, 15 C 547
——effect of bill of lading prescribing same terms, if accepted, quaere, 15 C 547
liable, for failure to deliver package, 17 C 141
in action against, for failure to carry safely, termini to be proved as alleged, 24 C 479
not excused from liability by negligence of colliding steamer, 27 C 608
delivery of trunk to railroad company; company liable as carriers for loss, while unchecked, 31 C 282
how far liable for money in passenger's trunk, 31 C 284
detention by fog; custom to transfer; liable for loss of perishable goods, 34 C 152
——failure by clerk signing receipt to examine boxes on their delivery; of no avail to carrier, 34 C 153
what is a sufficient averment of negligence of, 34 C 154
not liable for want of capacity of boat to carry freight, 36 C 74
——liable only in case of gross negligence in care of goods thus delayed, 36 C 75
withdrawal of boat for repairs, an "accidental delay" within bill of lading, 36 C 76
——substitution of different boat is not a breach of advertisement that a certain boat would run, 36 C 74
burden of proof where goods are lost, 37 C 277
——carrier bound to show ordinary care; special circumstances, 37 C 276
cannot exempt themselves from all negligence, by bill of lading, 41 C 342, 43 C 340
——may diminish the ordinary degree of care required, 41 C 342, 43 C 339
——American courts pass on the reasonableness of such contracts, 43 C 340
bound to furnish safe and properly constructed cars for transporting livestock; suitable with reference to kind and value, 61 C 531
complaint alleged that defendant was a carrier; bill of lading exempted certain specified injuries none of which covered the negligence charged, *held* no variance, 61 C 531
——in respect to every injury except those specially excepted defendant was liable, 61 C 531
exceptions in contract from injury by "breaking and chafing" *held* not intended to apply to livestock, 61 C 537
common-law rule making carriers insurers is relaxed in the case of livestock, 61 C 539
a shipper placed a valuable horse in an ordinary box car though offered a better car at a higher price; *held* under circumstances, shipper assumed risk of defects in car, 61 C 541
shipper bound by valuation and bill of lading in case of loss, 61 C 543
——charge that shipper was not bound unless there was an express contract that the valuation should determine damages, *held* incorrect, 61 C 544
may properly regulate his care of property

by its value and amount of his responsibility, 61 C 547
——is entitled to correct information de value of property carried, 61 C 548
pamphlet hanging in office of railroad company containing rates and rules is not of itself constructive notice of contents, 61 C 550
is bound to sidetrack car of livestock upon request if reasonably practicable, 61 C 551
——terms of way bill admissible as bearing on refusal of conductor to interrupt transit, 61 C 551
bill of lading for horse and colt; "value $100"; whether value covered both or not is for jury, 61 C 552
duty as to goods; where received under erroneous belief that they belonged to passenger, with no agreement as to them, 67 C 417
carrier not liable for negligence of owner in unloading livestock, 73 C 667
what constitutes common carrier; duty and liability in general, 73 C 707
requisites of complaint for damage to goods; duty implied by law need not be pleaded, 73 C 707
proof of damage to goods makes out prima facie case; but if other evidence is offered, it becomes but one circumstance in case; effect of, and burden to prove, special contract limiting liability; receipt of consignee not conclusive as to condition of goods, 75 C 171
evidence of care taken on rainy day no evidence of care on fair day, 75 C 172
railway not liable for loss of bag left in sight and custody of passengers, 79 C 565
goods for transportation do not attach special liability on the carrier until there has been a complete delivery for immediate transportation, 86 C 71
where goods were loaded on a car Saturday to be moved Monday, with the exception of some ponies, and the car was moved to a place where the ponies could be loaded, there is no liability if the goods are destroyed in the meantime, 86 C 71
provision in bill of lading putting burden of proof upon carrier to show freedom from negligence where damage results from defect in goods is valid, 97 C 225
express provision in bill of lading as to certain things to be done to protect perishable property does not remove common-law obligation not to be negligent, 97 C 225
state courts still have jurisdiction but must follow federal law and rules, 97 C 228
burden of proof to show breach of contractual obligation, 97 C 230
duty of carrier to plead terms of bill of lading relied on in defense, 97 C 231
cannot by contract exempt itself from liability for negligence, 97 C 234
presumption that injury to goods was due to fault of last of several carriers *held* rebutted by nature of goods—grapes,—long distance traveled in all and short time in hands of last carrier, extent of decay and condition of car when received, 100 C 262
——at common law carrier is not insurer as regards livestock, fruit, etc., 100 C 262
——where damage results from vice or defect inherent in property, 100 C 262
——interstate bill of lading providing that carrier not liable for loss due to defect or vice in property unless for its negligence, as to which it has burden of proof, changes this rule, 100 C 262
——but carrier may rebut presumption of negligence, 100 C 262
——interstate bill of lading governs entire transit, 100 C 262
——"dry car. Do not ice. Keep vents open to destination" protects last carrier from charge of negligence in not icing, 100 C 262
receipt for goods in apparently good condition does not make carrier liable for results of improper packing not known or reasonably to be known. 113 C 97
in general liable for all loss of goods not caused by act of God or public enemy, 122 C 578
where third party wrongfully took goods being shipped by common carrier, pendency of suit by owner against carrier did not preclude recovery of full value of goods in action of conversion by carrier against third party, 129 C 386

§ 4. ——Delivery to and by Carrier; Stoppage in Transit

delivery to carrier is essential to a recovery for loss, 20 C 360, 23 C 604
——habitual usage may dispense with actual notice of delivery to carrier, 20 C 361
common hands and crew of vessel are not agents to receive goods, 23 C 604
whether forwarding railroad company liable for freight by accepting goods, quaere, 32 C 94
wharf in common between connecting lines; delivery, 33 C 181
duty of carrier to deliver to consignee if present to receive goods at proper time and place, 38 C 148
——in such case there is no room for warehouseman, 38 C 148
not relieved of carrier's liability by placing goods in warehouse for delivery, 38 C 149
——consignee entitled to reasonable time to receive goods, 38 C 151
——carrier liable as such until expiration of such time, 38 C 151

removal of property from sealed to unsealed car for convenience is no conversion, 39 C 449
——though plaintiff be entitled to sealed delivery, 39 C 450
——trover will not lie, if goods be delivered without injury, 39 C 450
cannot compel freighters at dock to employ carrier's hands at fixed rates, 44 C 548
——though rule be one of convenience and expedition, 44 C 555
——whether growth of business might not render rule proper, quaere, 44 C 555
——facts preventing rule from being regarded as made by wharf owners, 44 C 556
——may impose reasonable restrictions de the person by whom they are to deliver goods to consignee or connecting carrier, 44 C 554
delivery to, not proved by vendee's order to vendor to ship by certain carrier, 60 C 373
——evidence of such order is inadmissible for that purpose, 60 C 373
when delivery of goods makes railroad common carrier; car partly loaded, 86 C 71
delivery to common carrier is delivery to vendee, 86 C 494, 88 C 23, 92 C 419, 94 C 80
liability for goods delivered to agent of owner upon his fraudulent representation that he is the consignee named in the bill of lading, 97 C 1
duty where goods are consigned to fictitious person, 97 C 1
estoppel to deny owner's right to goods from accepting goods for shipment, 97 C 6
——goods shipped upon fictitious orders in pursuance of fraud of owner's agent, 97 C 6
action for nondelivery of goods barred by time limit in bill of lading; six months ample time for delivery, 97 C 21
orders of interstate commerce commission de time limit for suit for nondelivery not retroactive, 97 C 22
carrier is not an insurer against delay, 97 C 225
——duty to deliver within reasonable time is implied contract engrafted on common-law duty to carry safely, 97 C 225
necessity of pleading any provisions of bill of lading relied on in defense, 97 C 231
bill of lading shows delivery of goods listed in it to carrier, 99 C 129
——provision in bill of lading acknowledging receipt of package "contents and condition of contents unknown" is reasonable, 99 C 129
——where bill of lading followed this clause by "one box shirts," contents how proved, 99 C 133
——it did not show receipt of shirts claimed to have been delivered to it in closed package, 99 C 133
proof of delivery of goods to carrier is essential to establish liability for loss, 99 C 131
interstate shipment governed by federal act and terms of bill of lading as construed by federal courts, 102 C 461
production and surrender of bill of lading before delivery of goods; carrier's liability for failure to require it, 102 C 461
carrier must plead and prove excuse for misdelivery, 102 C 461
bill of lading not "exhausted" or "spent" through lapse of reasonable time for delivery; and creditor taking it as security is bona fide purchaser, 102 C 461
attempt of holder of bill of lading to collect from deliveree not a ratification of misdelivery, 102 C 461
privilege, but not duty, of carrier to require surrender of bill before delivery; liability for wrongful delivery if it fails to do so, 104 C 342
carrier protected if it requires surrender of bill, 104 C 342
right of stoppage in transitu continued till final delivery, 104 C 342
notice of stoppage in transitu need not state basis of claim, since right only exists in case of insolvency, 104 C 342
notice of stoppage in transitu, though signed by third party, *held* sufficient to apprise freight agent of its source and authenticity, 104 C 342
untruthful replies of freight agent to notice of stoppage in transitu, *held* to show his knowledge of shipper's purpose and carrier's liability, 104 C 342
if carrier in doubt as to delivery after reasonable investigation, it may settle question in action of interpleader, 104 C 342
are not insurers against delay but duty is to deliver within reasonable time, 109 C 466
——burden is on plaintiff to prove this not done, 109 C 466
——finding of delivery in reasonable time is one of fact reviewable only if unsupported by subordinate facts or results from application of incorrect rule, 109 C 466
——carrier not bound to deliver on spur track unless by contract or custom, 109 C 466
——where there was such a contract but when car arrives, spur track is full, railroad not bound immediately to place car on private siding, 109 C 466
——finding that it was placed on siding in reasonable time upheld, 109 C 466

§ 5. ——Connecting Carriers

railroad company not liable for injury on connecting stage line, by reason of selling through ticket, 22 C 9
——evidence *held* insufficient to charge railroad company on ground of special contract, 22 C 9

——injury to goods on connecting lines stands on different grounds, 22 C 15

power of railroad company to make contract extending beyond its terminus depends on its charter, 22 C 16

prima facie liable as carriers only to terminus of their own line, 23 C 471

——receiving goods to be carried beyond terminus is no proof of special contract, 33 C 178, 23 C 472

——nor is advertisement of transportation facilities by such route, 23 C 475

liable beyond terminus, if there be joint undertaking with other lines, 23 C 472

liability beyond terminus is not affected by usage to give single bill and collect through freight; agency, 33 C 178

whether contract beyond terminus be ultra vires, quaere, 33 C 179

wharf in common between connecting lines; delivery, 33 C 181

not liable for deficiency in goods received from connecting line, 33 C 221

obligation of, receiving goods to be forwarded beyond its line, 56 C 143

——must be so delivered to forwarding road that such road shall incur liability of common carrier, 56 C 143

——especially so if receiving road collects freight through in advance, 56 C 143

——a breach of the forwarding contract existing between connecting roads which results in injury to goods is a failure of such obligation, 56 C 144

——and receiving road *held* liable, 56 C 144

presumption that injury to goods was due to fault of last of several carriers rebutted by nature of goods and circumstances, 100 C 262

bill of lading issued by initial carrier governs entire interstate transportation, 100 C 268

——terms, if applicable and valid, fix duties of all participating carriers, 100 C 268

where bill of lading said "do not ice," terminal carrier not bound to ice car, 100 C 270

——even though icing might have preserved car of grapes, 100 C 270

liability of initial, intermediate, and terminal carriers, 102 C 461

§ 6. ——Charges and Liens

not deprived of lien because of special contract, 10 C 115

——unless contract be inconsistent with lien, 10 C 115

——credit beyond time of delivery is inconsistent with lien, 10 C 118

carrier's duty to carry and keep safely a reasonable time after landing, 40 C 54

——in absence of agreement may charge separately for the two services, 40 C 54

——agreement implied from known custom, 40 C 55

A asked of B, the freight cashier, the rate to a certain place; B asked C, the waybill clerk, whose business it was to know; C by mistake gave less rate; in an action by A to recover goods held for excess, *held*

——that minds of parties have not met owing to the misunderstanding, 61 C 110

——that the railroad could charge reasonable price for its services and hold goods until paid, 61 C 111

——fact that B passed A's inquiry to C is the same as if A had asked C, 61 C 111

action arising during period of federal control must be against "agent" designated by President after March 1, 1920, and not against the director general; same rule if brought as counterclaim, 103 C 36

in action by director general of railroads for freight charges, counterclaim for failure to deliver other freight does not lie, 103 C 36

requisites to changes in tariff under federal statutes, 104 C 728

——presumption applied in federal court that necessary steps have been taken is to be applied by state court, 104 C 728

——effect of statute making schedules on file "prima facie evidence," 104 C 728

——coal tariff for "prepared and anthracite briquettes and boulets" *held* to include ordinary anthracite about "pea" size, 104 C 728

plenary scope of federal legislation and decisions on interstate commerce matters, 104 C 733

rights and liabilities of parties to interstate shipment of goods for freight charges are governed by federal laws and terms of bill of lading as interpreted, 125 C 241

——review of cases where consignee has instructed carrier to deliver "upon payment of charges," 125 C 241

defendant in California consigned carload to itself in Rhode Island; on arrival instructed terminal carrier, plaintiff, to deliver to S on payment of freight, but plaintiff delivered without collecting from S; on face of uniform bill of lading was stipulation providing that, if signed by consignor, carrier should not make delivery without collecting charges, otherwise consignor should not be liable, 125 C 241

——defendant as consignor, as consignee and as owner was liable for freight and other charges, 125 C 241

——in failing to sign nonrecourse clause defendant, as consignor, remained liable and was not relieved by failure of carrier to collect from S, 125 C 241

——carrier cannot by any act estop itself from exacting lawful freight rate; oth-

erwise it could purposely discriminate between shippers, 125 C 252, 254
——no implied right in contract in shipper to condition delivery upon payment of freight, or implied obligation of carrier, breach of which would absolve former's obligation, 125 C 241
——aim of Interstate Commerce Act to secure for every shipper equality of rates, without discrimination or preference, 125 C 242
——railroad and shipper bound inexorably to follow rate published, 125 C 242
——such hardship, including denial of recoupment, as devolves on parties, arises from broad public purpose, 125 C 242
recoupment to defendant in diminution or extinction of charges, on ground that carrier converted goods by failing to collect charges, denied, as practical effect would be a discrimination in favor of defendant, 125 C 242

§ 7. Passengers

§ 8. ——In General

evidence of carrier's conduct just after injury, admissible when, 13 C 324
degree of care required toward, 13 C 326, 21 C 576
accountable for greatest care and watchfulness, 21 C 253
——highest degree of care which a reasonable man would use, 21 C 253
——applies to vehicles, horses, and harness, 21 C 253
——to skill and sobriety of driver, 21 C 253
not liable for accident which no foresight could prevent, 21 C 254
what is a sufficient averment that defendant is a common carrier, 21 C 570
——averment that defendant had power by charter to carry is not essential, 21 C 570
carriers have right to prescribe reasonable rules de rates and method of payment of fare, 24 C 259
——extra fare for failure to buy ticket, 24 C 261
——notice, as to nonticket holders, not a contract, 24 C 261
——proposal to furnish tickets may be withdrawn at pleasure, 24 C 263
passenger's right to re-enter cars after wrongful ejection, 24 C 264
——liability of carrier for injury inflicted on such re-entry, 24 C 264
right of conductor to remove passenger refusing to give up his ticket, 28 C 88
duty of carrier to maintain order and guard passengers against violence, 34 C 557
——extends to protecting one passenger from another's violence, 34 C 559
——injury from soldier; being compelled to carry soldiers is no defense, 34 C 559
advertisement to passengers is not a contract with freighters, 36 C 74
may demand fare of commuter not showing ticket according to rules of ticket, 36 C 290
——on refusal to pay may eject the person, 36 C 291
commuter entitled to reasonable time to find mislaid ticket, 38 C 559
——in absence of express stipulation to pay fare unless ticket be shown, ejectment not justified, 38 C 560
——notice given after purchase of such ticket is not binding on holder, 38 C 561
no right to eject passenger except at regular station, 38 C 561
high degree of care required only after one becomes passenger; one who merely signals car to stop is not such, 65 C 201
care required of carrier of passengers; stagecoach, hackmen, liverymen, 77 C 692
requirement of utmost care for passenger's safety which is consistent with nature of business, 119 C 320
——safe, sufficient and suitable vehicles for transportation must be provided and serviced, 119 C 320
——doctrine of res ipsa loquitur invoked most frequently in actions against carriers, 119 C 320
bound to exercise high degree of care to passengers, but not until they have become such, 120 C 589
——up to then, though they may have contracted for future transportation, he owes no more care than third party, 120 C 589
——special duty begins when, by coming upon his premises, or in the act of entering his vehicle, the actual relation of passenger to carrier is assumed, 120 C 589
within their scope, orders of public utilities commission have force of statutes and violation of any proper order is negligence per se, 122 C 236
enactment of Congress and rules of interstate commerce commission thereunder substantially the same as those of our public utilities commission concerning insurance requirements of interstate carriers *held* to have superseded the latter and rendered them inoperative, 122 C 276
Docket 6253 established minimum requirements as to insurance by carriers over highways of State, except where adequate financial responsibility shown, one of provisions being that insurance should be in company licensed to do business in State, 122 C 288
duty of common carrier of passengers for hire is only satisfied if it exercises highest degree of care, 124 C 549, 647
is bound to warn passengers of a danger when circumstances are such that it ought to foresee that it exists and that passengers would

not reasonably be likely to apprehend it, 126 C 200

is under duty to exercise highest reasonable degree of care, vigilance and forethought which is consistent with mode of conveyance and practical operation; is not insurer, 126 C 205

§ 9. ——Railroads

evidence of usage as to length of stop at station admissible, 21 C 576

railroad company not liable for injury on connecting stage line, though selling a through ticket, 22 C 9

carrier not liable for unauthorized, wanton injury by servant, ejecting passenger for good cause, 24 C 265

conductor may remove passenger who refuses to pay, 28 C 89

liability for ejecting commuter from train, 38 C 557

one riding with stock without knowledge or consent of railroad company is not a passenger, 51 C 149

——intent to pay if called on immaterial, 51 C 150

——his only right is an immunity from wilful, wanton injury, 51 C 150

shipper of horses presumed to be agent of one who unknown to railroad company accompanied horses, 51 C 151

free pass *held* to be regarded as gratuitously given and without consideration, 53 C 384

a passenger riding on a free pass for valuable consideration, has same rights as money paying passenger, 53 C 386

condition in free pass exempting company from negligence of employees not void as against public policy, 53 C 388

——such condition not good in case of a paying passenger, 53 C 387

——"negligence" in such exemption, 53 C 387

boy having capacity to accept free pass with condition exempting from liability *held* bound by it, 53 C 390

——so *held* of boy employed by restaurant keeper to peddle sandwiches and fruit on trains, 53 C 383

railway is liable for negligence toward one traveling for pleasure on Sunday, 66 C 272

railroad bound to highest degree of care; what this requires, 66 C 512

no duty to passengers to give telegraphic information to trains approaching each other, 70 C 159

——must enforce as well as make adequate rules; existence of emergency, 70 C 159

negligence and contributory negligence where train is stopped before reaching station and started again with platform gate open, 78 C 711

railroad not a common carrier if freight conductor takes passenger, 82 C 574

one riding on a freight train is not prima facie a passenger, 82 C 574

judicial notice taken of what is a freight train and where a caboose is located, 82 C 574

only passenger can take advantage of presumption of negligence arising from accident, 82 C 575

presumption that one riding in regular passenger car is a passenger, 82 C 576

declaration of brakeman of freight train as to conductor's authority not binding on company, 82 C 577

railroad not insurers of passengers but must exercise highest degree of practical human skill, 85 C 11, 641

proof that a transom in a car fell without any apparent cause is sufficient to justify an inference of negligence, 85 C 11

violent stopping of train is sufficient for inference of negligence if not explained, 88 C 65

overhead rack for baggage requires company to operate its trains so baggage will not fall, 88 C 65

——not negligence to put one suit case over another unless company so states, 88 C 65

plaintiff running to catch a train is not in the exercise of due care, 88 C 82

——brakeman opening platform gate is no excuse, 88 C 82

one is a passenger when he enters place provided for boarding a train, within a reasonable time before train starts, to take passage, 90 C 74

purchase of ticket does not necessarily make one a passenger, nor lack thereof prevent one from being a passenger, 90 C 74

that no accident arising out of same type of construction used in other coaches of defendant and other railroads had been reported was strong evidence of no negligence in using that type of construction, 129 C 392

evidence insufficient to afford reasonable basis for conclusion that train was stopped in so unusual a manner as to constitute negligence, 129 C 392

§ 10. ——Street Railways

See also Street Railways § 10.

liability of street railway for injury to free passenger, when, 45 C 284

duty to protect passenger from violence of others; being pushed forward while alighting; fact that passenger is carrying bundles to be regarded, 68 C 572

one alighting to transfer is still a passenger, 68 C 574

injuries due to standing on running board, 73 C 141, 75 C 571, 81 C 241

duty of tramways where they cross, 73 C 428

must give reasonable time to alight; whether one has been invited to alight is question of fact, 77 C 145

duty of motorman to passengers; to those on running board; to fellowservant, 81 C 243

riding on running board not negligence as a matter of law; charge exonerating company, upheld, 81 C 556

whether a street railway should provide straps or hand-holds is a question of fact for the jury, not one of law, 85 C 641

when it does not appear that there were no other cars which plaintiff might have taken and no negligence was based on the fact that there were not enough cars, it is error to charge that it was company's duty to provide enough cars, 85 C 641

no negligence for a street railway company to permit passenger to ride in a crowded car, but car must be operated in view of that fact, 85 C 641

a passenger who voluntarily and intelligently takes a position that is not intended for passengers, assumes risks of the situation which are incident to the proper operation of the car, but is not thereby guilty of contributory negligence so as to prevent his recovery, 85 C 641

——standing between two front seats of an open car is such a risk, 85 C 641

passenger may rely on trolley crew's acting reasonably, 86 C 527

highest practicable degree of care required of street railway in case of alighting passengers, not due or ordinary care, 87 C 652

street railroad is not insurer of passengers, but must exercise highest degree of care which can be expected of persons versed in the business, 88 C 700, 90 C 24

——mere fact of catching skirt in step no evidence of negligence, 90 C 24

not negligent for conductor to permit hand luggage in aisle; may be in case of overcrowding, 91 C 606

relation of passenger continues while being guided by conductor through woods around an obstruction; care required, 92 C 310

duty of exercising utmost care toward passenger; duty of motorman and conductor, 103 C 678

company *held* negligent for failure of motorman to put sand on slippery car step or warn passenger of danger, 107 C 236

passenger must use ordinary care to protect himself, 110 C 625

high degree of care required of company to protect passengers, 110 C 625

——includes necessary instrumentalities and arrangements, 110 C 628

mere characterization of stopping and starting by words not enough to establish negligence, 110 C 625

——words must be backed by physical facts; what is meant by this rule, 110 C 625

motorman may be negligent in starting car knowing that passenger is not in position to guard himself from fall, 110 C 625

company *held* liable for injury to arm of passenger where motorman closed door on it as she was entering vestibule, 111 C 732

duty of motorman to a passenger to exercise highest degree of care, 113 C 556

——this is fixed by law but what conduct is necessary to comply with it is question of fact, 113 C 556

——whether motorman was negligent in not warning passenger on running board, of truck in street so near as to endanger him, is question of fact, 113 C 556

passenger injured in trolley by window sliding down causing glass to break; car had been on previous run and it was not known whether employee or previous passenger opened window; window not being under sole control of defendant doctrine of res ipsa loquitur did not apply, 119 C 316

§ 11. ——Busses

duty of driver of bus to furnish a safe place to alight, 113 C 408

——requires exercise of highest degree of care and skill, 113 C 408

——when that duty has been performed, company owes to passengers same duty it owes to any pedestrian, 113 C 408

——safety of place to alight may be affected by passing traffic, 113 C 408

——care to be exercised toward young child, 113 C 408

——where autobus by stopping invited child to alight on pavement with likelihood of passing vehicles, company *held* negligent, 113 C 408

——that accident was due to negligence of driver of another vehicle does not as matter of law prevent conclusion that negligence of company was proximate cause of accident, 113 C 408

circumstances *held* sufficient to sustain recovery by plaintiff claiming injuries from sudden stop of bus, 113 C 774

plaintiff was passenger for hire in defendant's bus which overtook and collided with automobile; charge de proximate cause *held* sufficient, 116 C 32

——and charge de duty of automobile driver to give signal of intention to slacken speed, 116 C 32

person crossing shoulder of road with intention of entering bus which has stopped at edge of concrete is not a passenger but merely traveler, 120 C 589

——bus driver owes him merely duty of exercising reasonable care, 120 C 589

whether passenger in bus stopped on danger-

ous curve and injured when automobile struck it from rear, was guilty of contributory negligence in causing bus to stop at that point is question of fact, 121 C 441

if there had been violation of rule of public utilities commission which provided that bus, when taking on or discharging passengers, should be stopped at extreme right of available roadway, jury justified in finding operator negligent, 122 C 236

"available roadway" broader than "traveled portion of highway," and means such part of roadway as is capable of being used, 122 C 236

passenger thrown from seat of bus to floor by sudden stop to avoid collision, 122 C 300

bus owner as common carrier for hire bound to use utmost care consistent with nature of business, 122 C 301

——want of such care may be proved either by direct evidence or indirectly by showing physical facts, 122 C 301

as carrier for hire, bus operator bound to exercise highest degree of care and skill, 122 C 374

where bus driver accelerated speed of bus instead of stopping and avoiding collision, assuming that other car would obey traffic officer's signal and stop, verdict for passenger sustained, 122 C 374

sufficient evidence for jury to find that defendant was negligent in permitting step of bus to become defective and that plaintiff free from negligence in stepping on it, 122 C 375

burden on plaintiff to prove that fall on bus rather than burns received later caused diabetic upset which was substantial part of damage, 122 C 375

——production of expert testimony essential, and she did not sustain this burden, 122 C 375

plaintiff slipped on ice on step of bus in alighting; no evidence of ice on step before accident, nor could there be inference as to how long it had been there; verdict for plaintiff should have been set aside, 123 C 304

jury justified in concluding that bus driver in exercise of high degree of care incumbent on employee of common carrier, should have discovered patch of ice on step before plaintiff fell and either remedied condition or warned her, 123 C 682

when bus stopped in place dangerous because near burning gas station and of traffic hazard, with engine running contrary to rule of public utilities commission, finding of negligence justified, 124 C 647

——verdict against bus owner could not be set aside on ground that his negligence not proximate cause where, after driver left bus, passenger attempted to drive it and plaintiff thrown off seat and injured, 124 C 648

passenger on bus injured when it suddenly stopped to avoid pedestrian; verdict for defendant sustained, 124 C 688

bus company under no duty to warn passenger of luggage rack over seat when amount of head clearance available was obvious, 126 C 200

no basis for inference that loose bolts on floor of bus had been there sufficient time so that bus owner should have discovered them, 127 C 364

——in absence of proof that bolts were on floor of bus as result of conduct of employees or with their knowledge doctrine of res ipsa loquitor would not apply, 127 C 364

§ 12. ——Miscellaneous Carriers

stage sleigh, loaded heavily on top, upset by sliding off road, 21 C 253

——no defense that freight was carried under notice, 21 C 255

failure of commissioners to order certain equipment for ferryboat as rebutting negligence in not using it, 69 C 363

as to elevators, 76 C 317

basis of doctrine requiring high degree of care, 98 C 634

——does not apply to aeroplane swing in amusement park, 98 C 634

implied obligations owed to passenger by operator of taxicab, 102 C 76

ambulance serving without charge *held* public carrier within exception in guest statute, 114 C 400

owner of department store operating escalator for convenience of customers is not common carrier, 117 C 525

where reasonable inference from evidence was that taxi driver accepted and solicited passengers indiscriminately, court should have charged as to liability on basis of common carrier, 124 C 549

——charge that passenger entitled to recover if negligence of driver was substantial factor, even if there was no negligence on part of driver of other vehicle involved, correct, 124 C 549

taxi driver, common carrier, negligent in colliding with car already in intersection which he could see, though he was on right, 125 C 734

§ 13. Employees; Federal Employers' Liability Act

the Federal Employers' Liability Act is not enforceable in Connecticut, 82 C 352, 373

——overruled, 223 US 1

the power in Congress to regulate commerce is subject to constitutional limitations and

such as arise from our dual form of government, 82 C 352
Federal Employers' Liability Act follows Lord Campbell's Act, and creates a new right of action based on benefits to survivor, not the deceased, thus differing from Connecticut Act, 87 C 328
complaint under United States Employers' Liability Act must set out who surviving relatives are, 87 C 328
——it may be good after verdict even if it does not, 87 C 328
statute requiring warning of bridges does not apply to overhead wires, 87 C 329
Federal Employers' Liability Act is enforced in state courts and, when applicable, is exclusive remedy, 87 C 634
Federal Liability Act does not abolish assumption of risk except where carrier violates federal statute for safety of employee, 88 C 409
Federal Liability Act does not apply to interstate commerce by water, 89 C 368
workmen *held* to be employed in interstate commerce, 90 C 271
federal compensation act applicable when employee injured while engaged in interstate commerce, 96 C 119, 99 C 404, 105 C 122
test of whether injured employee of carrier is entitled to relief, 99 C 406
——depends upon whether he was engaged in interstate transportation, 99 C 406
——or in such closely related work as to be practically a part of such transportation, 99 C 406
——when facts are undisputed, court itself should determine that question, 99 C 407
——failure of court to do that is harmless if jury reach the correct conclusion, 99 C 407
——facts reviewed and *held* to show "new construction" rather than "repair work," 99 C 408
——one engaged in constructing instrumentalities for interstate commerce is not employed in such commerce, 99 C 410
——but the maintenance and repair of such instrumentalities is interstate commerce, 99 C 410
assumption of risk a defense under, 100 C 130
——except as otherwise provided by Federal Safety Acts, 100 C 130
——employee assumes all risks necessarily incident to employment, 100 C 130
——but not special risks unless he is aware of them, 100 C 130
——switchman *held* to have assumed risk that cars left unbraked would roll when jolted in unsuccessful attempt to couple, 100 C 138
employer not liable where its methods accord with prevailing practice, 100 C 130
Federal Employers' Liability Act does away with fellow servant doctrine as a defense except where servant is acting outside scope of employment, 102 C 361
——as where railroad employee, having no business to do so and where reasonable care on part of company would not have prevented, starts engine injuring fireman on it, 102 C 361
test for determining whether employee engaged in interstate commerce, 105 C 122
if employee engaged in interstate commerce, Federal remedy is exclusive, 105 C 122
station master at Derby electrocuted while putting out lights; *held* engaged in janitor service, not interstate commerce, and widow entitled to compensation, 105 C 122
test of whether injured employee of common carrier was engaged in interstate commerce, 109 C 94
when work common to both interstate and intrastate commerce it must be held performed in former, 109 C 94
——in which case exclusive remedy is under Federal Employers' Liability Act, 109 C 94
preparing engines for interstate use and cleaning ashpit of ashes from them *held* work in interstate commerce, 109 C 94
Federal Employers' Liability Act creates two distinct causes of action, one in injured employee and other in relatives, 111 C 196
——latter lies only if employee had right of recovery immediately before death, 111 C 196
——if claim of employee has been settled or he has received satisfaction of judgment right of relatives is gone, 111 C 196
——two year limitation applies to both survival of right of action on death of employee and distinct right of relatives to recovery, 111 C 196
——nature of right of action by relatives, 111 C 199
Amendment of 1910; limitation of action to two years from day it accrued applicable to both causes of action, 111 C 196
action by executor on behalf of widow for death occurring five years after injury *held* barred, 111 C 196
action in behalf of beneficiaries arises by operation of statute, not by process of survival, 111 C 196
railroad employee engaged in both classes of employment, interstate and intrastate, must find his remedy against employer in federal law, 121 C 461
——so gate tender employed by interstate railroad where its tracks were crossed by trolley company, though latter remitted to railroad 70 per cent of wages, not under Compensation Act, 121 C 461
——fact that acts in safeguarding crossing were done by employees of trolley company, nil sig., 121 C 461

CATS

See ANIMALS § 5

CATTLE

See ANIMALS § 3; FENCES; TRESPASS

CAUCUSES AND PRIMARIES

See ELECTIONS AND ELECTORS

CEMETERIES

association may be formed for enlarging existing grounds, 20 C 476

——powers of such association, under statute of 1849, 20 C 477

peculiar use of lot in, for a long period, confers a right, 20 C 477

only a right of way in the separating alleys passes to vendee of lot in cemetery, unless deed expressly grants the title to the alleys, 33 C 65

——deed permitting certain acts is no estoppel to grantor asserting title to alleys, 33 C 67

——evidence of custom de separating alleys, admissible, 33 C 66

conveyance in fee restraining use to purposes of burial, valid, 39 C 60

——such right of burial use is not a mere easement, though court has power to grant a decree of sale, on petition, 39 C 61

——circumstances insufficient to justify such decree, 39 C 62

——such conveyance is protected by spirit of statute of 1702, de public charitable uses, 39 C 62

land legally acquired by town for cemetery not abandoned by mere town vote, 42 C 384

land taken for cemetery is taken for public use, 43 C 241

——may be taken by eminent domain, 43 C 241

——cannot be taken for inconsistent public use, except in case sof necessity, 43 C 243

bequest to keep lot in good order or repair *held* not a charitable bequest, 51 C 386

proceedings by cemetery association under statute to take adjoining lands owned in severalty by different owners; *held* owners properly joined as defendants, though having no joint interest, 53 C 542

burial of the dead a necessity; land may be taken for that purpose, 53 C 552

——land taken for such purpose is for public use if all the public have a right of burial there, though expense practically excludes some, 53 C 553

——but land is not for public use where public have not and cannot acquire right to bury in it, 53 C 553

under statute a cemetery *held* to be a public convenience and necessity, though intended for exclusive use of Roman Catholics, 58 C 94

owner of land may use it for a private cemetery aside from question of public health, 58 C 96

under statute de power to take land for cemetery "where cannot otherwise acquire title" *held* to intend only a failure of parties to agree, 62 C 320

——statute reviewed, 62 C 322

forbidding further use of cemetery *held* a lawful exercise of police power, not a taking for public use, 62 C 392

provision for care of grave *held* obligatory during life of trust only, 73 C 58

cemetery association is not a benevolent society, 73 C 679

establishment of and condemnation of land for, 77 C 84, 87 C 428

title to and control of lot; by-laws of voluntary association or corporation owning must be reasonable, 78 C 90

ecclesiastical society can receive bequest for cemetery, 82 C 189

exempt for taxation; must pay assessment for sidewalk, 83 C 204

may hold legal title to land though all rights of burial disposed of, 83 C 204

duty of those in control to keep space for committal services safe for attendants of burial, 109 C 410

——distinguished from duty to those walking across burial plots for convenience, 109 C 410

condition due to removal of marker and covering hole with mat *held* not result of negligence of owners of cemetery, 109 C 410

no contributory negligence in walking from grave after burial toward pathway, in space where attendants expected to be, 109 C 410
——but had plaintiff crossed pathway and walked over other plots toward car, quaere, 109 C 410

CERTIORARI

never adopted in this State, 13 C 118, 67 C 207
application for, in United States Court, does not prevent state court from proceeding with case, 71 C 339
under Workmen's Compensation Act, order to bring up evidence is in nature of, 93 C 93

CHAMPERTY AND MAINTENANCE

See also CONTRACTS § 7

motion to disclose; deposition; construction of statute, 12 C 136
violation of the statute involves an unlawful intent, 14 C 23
New York law applied in action by purchaser of bill of exchange against acceptor in Connecticut, 18 C 138
an attorney having made champertous agreement may yet make a valid demand for a transfer of the stock, 30 C 273
defined, according to laws of Connecticut, 40 C 570
common law as to champerty and maintenance does not exist in this State, 40 C 571, 100 C 104
——nor in New York, 40 C 573
reasons for law against do not exist here as in England; enforcement is limited, 61 C 261
question in every case is whether contract is opposed to public policy, 61 C 261
contract to bear expense of suit on life insurance policy and to receive half amount recovered *held* not opposed to public policy, 61 C 261
agreement between attorney and holder of nonnegotiable chose in action *held* invalid as against public policy, 77 C 457
a deed by one ousted of possession is opposed to the principle of common law against maintenance, 81 C 547
champerty and maintenance are modified from the common-law principles by statute, 85 C 260
attorney at law can purchase a judgment and bring suit on it in his own name, 85 C 260
champertous agreement does not affect validity of cause of action, 100 C 104
common-law doctrine not adopted in this State; sole question is whether transaction opposed to public policy, 106 C 66, 115 C 70, 129 C 362
agreement that conveyance of real estate shall be rescinded unless grantee can secure judgment releasing restrictions is not opposed to public policy, and grantee may maintain action, 106 C 66
any party having real, though indirect, interest in outcome of litigation, may participate in it, 106 C 542
where tax attorney keeps control of litigation and there is no conflict of interests he may employ attorney of interested individual in proceedings to enforce tax lien, 106 C 550
where plaintiff bought land, knowing that agreement as to quarrying upon it was being violated, to preserve scenic beauty, his action was sustained, 115 C 70
ordinarily agreement against public policy in nature of maintenance and champerty of no avail to defendant, 129 C 362
——right, to enforce which action is brought, does not originate in illegal agreement nor is proof of that agreement necessary to its establishment, 129 C 362

CHANGE OF VENUE

See CRIMINAL LAW AND PROCEDURE § 2; VENUE

CHARGE TO JURY

§ 1. IN GENERAL
2. ISSUES TO BE COVERED
3. HARMLESS ERROR

Charge to Jury

§ 4. ——In General
5. ——Charge to be Considered as Whole; Statements to be Read with Context
6. ——Error as Affected by Verdict
7. ——Immaterial or Undisputed Matter; Trivial Inaccuracies
8. ——Error Corrected in Another Part of Charge
9. ——Charge Favoring Appellant
10. ——Miscellaneous Cases
11. Negligence
12. ——In General
13. ——Last Clear Chance Doctrine
14. ——Assumption of Risk
15. ——Res Ipsa Loquitur
16. ——Automobiles and Other Vehicles on Highway
(1) In General; Miscellaneous Cases
(2) Speed and Control; Sounding Horn; Skidding
(3) Street Intersections
(4) Meeting; Passing; Overtaking; Stopping; Backing; Turning; Signalling
(5) Lights; Brakes; Equipment
(6) Persons on Foot
(7) Passengers; Guests
(8) Family Car Doctrine; Operation by Another
17. ——Master and Servant
18. ——Defective Highways
19. ——Landlord and Tenant; Invitation and License
20. ——Physicians and Surgeons
21. ——Carriers
22. ——Miscellaneous Particular Cases
23. Nuisance
24. Agency; Brokers; Independent Contractors
25. Contracts; Sales
26. Criminal Law
27. ——In General
28. ——Reasonable Doubt; Presumption of Innocence; Requirement of Two Witnesses in Capital Case
29. ——Homicide Cases
30. ——Miscellaneous Cases
31. Damages
32. Evidence; Burden of Proof; Pleadings
33. Fraud; Libel and Slander; Testamentary Capacity; Undue Influence
34. Miscellaneous Cases
35. Comments on Evidence
36. ——In General
37. ——Comments on Witnesses in Civil Cases; Credibility
38. ——Witnesses in Criminal Cases; Testimony of Accused; of Accomplice
39. ——Miscellaneous Civil Cases
40. ——Miscellaneous Criminal Cases
41. Request to Charge and Objections
42. ——In General; Form of Request
43. ——Substantial Compliance in Charge
44. ——Requests on Disputed Facts or Irrelevant to Issues or Evidence
45. ——Reading or Explaining Requests to Jury

NOTE: This title does not list all cases in which a charge has been before the Supreme Court. Where the opinion has dealt in the main with the law pertaining to a certain subject the case has sometimes been listed under that title rather than here.

§ 1. In General

new trial not granted for merely formal objections to charge, but on such as are applicable to the merits of the cause, 3 C 15

court may caution jury against appeal to feelings, 13 C 298

narration of similar incident, for illustration, no error, 27 C 300

charge construed solely with reference to points made at trial, 29 C 347

——and with reference to facts in the case, 44 C 541

court presumed to have instructed jury as to sole purpose for which evidence was admitted, unless motion shows the contrary, 35 C 207

court may tell jury that it is their duty to agree, 42 C 310, 67 C 578

statute requiring judge to charge in writing, if requested, is mandatory, 47 C 75

unintentional and harmless failure to file written charge with clerk as required by statute, not ground for new trial, 49 C 463

may be in the alternative if evidence would justify different conclusions of fact, 59 C 400

——court not bound to so charge where there was only one simple disputed question of fact, 59 C 396, 400

origin of instructing jury as to law, 65 C 290, 69 C 130

rules as to general requisites not so strictly applied to charge in justice court on minor point, 66 C 432

jury bound to accept charge, 66 C 523, 69 C 128, 73 C 18, 75 C 218, 78 C 28, 80 C 531, 85 C 438

piecemeal statements of law not to be commended, but not erroneous unless indicating that jury may have been misled, 66 C 578

not error to fail to repeat charge once given when it becomes applicable a second time, 67 C 35, 82 C 199, 84 C 152, 248

should not lay special stress on one element of case, 71 C 392, 73 C 468, 74 C 524, 78 C 198

——as in case of charge as to reasonable care, 77 C 295, 80 C 252, 260

——or on facts favorable to one side, 64 C 339

purpose of charge; not tried by as strict requirements as is final decision of appellate court, 71 C 393

as to necessity of qualifying general statements, 72 C 306

where counts differ in their nature, charge should be adapted to all, 73 C 348

should state law as applicable to facts, 73 C 348, 74 C 425, 79 C 379, 82 C 199, 85 C 16, 86 C 292

general rule in civil actions, 73 C 662, 74 C 528, 78 C 29, 365, 677, 79 C 380, 81 C 403, 489

——in criminal cases, 72 C 39, 77 C 275

as part of record, to show scope of judgment, 74 C 568

charge made up of statement of conflicting claims, disjointed paragraphs, etc., improper, 78 C 29, 65, 365

charge authorizing jury to build inference on inference without substantial basis of fact, improper, 79 C 348

court should leave disputed facts to jury; may assume undisputed facts, 79 C 463, 85 C 594

quotations as to facts from judicial opinions are dangerous, 81 C 626

cannot state facts as proven if there is no evidence concerning them, 82 C 29

court can use its own language, 82 C 624

admission of evidence is immaterial, if no claim is made in regard to it and the jury is so instructed, 82 C 653

a charge is assumed to be correct if not questioned, 83 C 97

the facts assumed and stated must be supported by the evidence, 83 C 597

no error if more time is taken to present one side in charge than the other if both are treated fairly, 84 C 152

a criticism of a charge that is made too precise and exacting will not be entertained, 85 C 56

general reference to exceptions is sufficient where no claim falls within them, 85 C 459

charge cannot withdraw question of fact, 86 C 335

where charge is confined to situation presented by plaintiff's evidence, it is good, 86 C 527

claims, unsupported by the evidence, should be withdrawn from the jury, 86 C 598

error to leave question of law to the jury, 86 C 641

not error merely to state claim of party unless the record shows there was no evidence to support it, 87 C 345

ordinarily an erroneous charge on any material issue is ground for new trial, 87 C 652

use of permissive rather than imperative language not error, 90 C 35

under a claim of error on appeal, no advan-

tage can be taken of alleged mistake of jury to understand instruction, 90 C 381
extracts from opinions of Supreme Court are seldom adapted for use in a charge, 90 C 701
too late after verdict to raise question of failure of court to charge as to change of plaintiff's firm, 91 C 249
facts admitted are not a matter for the jury, 92 C 226
sufficiency of charge is determined by claims actually made and passed upon, not those that might have arisen, 92 C 604
attention of court should be called at the time to wrong assumption of facts in charge, 93 C 328
action of court and jury should not be confused, 93 C 381
statement of facts not challenged is assumed true on appeal, in the absence of the evidence, 93 C 446
pertinent considerations addressed to jury are proper even if they affect credibility of plaintiff's claim, 93 C 598
court can assume truth of facts where any other conclusion would be unwarranted, 94 C 197
grammatical and literary shortcomings do not affect charge, 95 C 282
erroneous admission of evidence not cured by subsequent charge, 95 C 639
errors in charge not considered in absence of finding of fact showing what was claimed to be proved by each side, 96 C 334
court need not define words used in ordinary sense; "overt" act, 96 C 420
cannot direct return of any particular verdict, 96 C 428
judge cannot rely upon previous explanation of matters to the jurors in other cases, 98 C 498
omission of instruction concerning one aspect of two-fold cause of action, 98 C 523
must be appropriate and adequate to the case, 99 C 236
remarks to jury on returning them for further consideration as part of charge, 99 C 417
contradiction upon a vital, fundamental point requires new trial, 99 C 423
permitting opponent to proceed on theory that pleadings have certain legal effect and even introducing evidence in rebuttal does not prevent party insisting that jury be charged upon basis of their real effect, 100 C 737
correct general statements of law not adding to completeness or correctness of charge discountenanced, 101 C 611
statements of general principles alone not enough, 102 C 145
telling jury that they will have pleadings before them for their guidance does not leave them to construe them, 103 C 268
must convey practical criterion by which technical principles may be applied, 103 C 553
failure to charge in technical language of no consequence if real issues placed before jury, 103 C 656
party cannot complain of reference in charge to original allegations of amended complaint, where he based cross-examination on them, 104 C 297
charge deemed to have been adequate if no exception to it was taken, 104 C 336
error to withdraw any relevant and material fact from consideration of jury, 104 C 464
trial court justified in submitting case to jury on the claims of the parties, 105 C 49
trial court may call jury's attention to an "admitted" fact, 105 C 482
legal definitions should be applied to facts claimed to have been proved, 105 C 528
direction to jury to "consider all claims" of counsel not error where jury were told to take law from charge, 105 C 757
charge must define legal principles and present relevant facts, 106 C 205
trial court must refer specifically to statute, when applicable, unless it does not vary from common law, 106 C 383
privilege and duty of counsel to call trial court's attention to errors, 106 C 506
trial court may assume the existence of a fact as to which the evidence is undisputed, 106 C 677
hypothetical instances and supposititious examples of common experience may be used, 107 C 18
——but court should not relate facts of alleged actual occurrence foreign to issues, as bearing on argument that reasonable persons would act in certain way, 107 C 18
trial court not bound to treat fact as proven, unless it is patently and conclusively established, 107 C 201
reasonableness of application of statute to given situation cannot be left to jury, 107 C 633
charge must not assume as established a contested issue of fact, or that certain proposition is demonstrated by physical facts unless no other conclusion reasonably possible, 107 C 670
trial court need not explain meaning of statute, if its application to the case is not questioned, 107 C 709
charge, though generally correct, erroneous if not qualified to meet peculiar circumstances of the case, 108 C 63
brevity and simplicity desirable, 108 C 95
——but not to extent of failure adequately to explain fundamentals necessary for adequate guidance of jury, 108 C 95
repetition of part of charge within discretion of court in returning jury for reconsideration of verdict, 113 C 247

additional instructions given in response to question by a jury are usually more informal and expressed with less exactness, 114 C 368
simplicity and conciseness is desirable but requires great care to see that no essential element is omitted, 115 C 284
whether court on returning jury for reconsideration should charge as to their right to adhere to verdict rendered, considered, 116 C 48
where court charged with unnecessary fullness as to one aspect of case, but was correct in law, no error can be claimed as to it, 116 C 144
while it is commendable to make charge brief and simple, court should take great care not to omit essential element, 116 C 565
duty of court to give jury such instructions as are applicable to issues and sufficient for their guidance in coming to verdict, 116 C 565
in returning jury for reconsideration of case, proper for court to tell them why they are returned, 117 C 428
——unless this charge erroneous, action in returning them will not be reviewed, 117 C 428
——not erroneous for court to tell them that verdict they had returned was inadequate, 117 C 428
court may not assume that jury from previous experience is familiar with principles of law, 118 C 214
where charge not questioned, Supreme Court infers that instruction as to legal duty was correct and adequate, 118 C 467
counsel should call attention to erroneous reference in charge at the time, 119 C 68
when it appears upon an inquiry by jury that they have failed to understand a principle of law in the charge, duty of court, on request of counsel, to further explain, 119 C 178
there being no appeal from court's charge, it is presumed that jury was correctly instructed, 122 C 649
charge which contains sharp and absolute contradiction upon a fundamental point is erroneous, 126 C 27
error in charge as to one joint tort-feasor for whom verdict is found of no avail to other held liable, 126 C 127
test of sufficient instructions; need not be so accurate as opinion of court of last resort, 126 C 309
relatively greater effect of instructions at end of charge, 128 C 658
attorney should cooperate in court's effort to ascertain any objections to charge, during and after delivery, 129 C 123
——but no statute or rule of court requires exceptions to charge to be taken at time of delivery, 129 C 123
where complaint as to omissions in charge came as afterthought on part of experienced counsel, claimed errors will be scanned with care; but where errors concern vital issues, counsel's conduct cannot affect right of relief, 129 C 560

§ 2. Issues to be Covered

omission to charge on question not distinctly raised not error, 7 C 504
court cannot charge as to matters not presented by the issue, 13 C 295
new trial not granted for omission, if no specific charge requested, 15 C 340, 20 C 362, 26 C 403
new trial not granted for omission to charge on speculative proposition, 15 C 364, 34 C 396, 56 C 232
new trial not granted for omission to charge on state of facts found not to exist, 19 C 201, 21 C 466
court to pronounce legal conclusions from facts found or admitted, 19 C 570
jury to be instructed as to law applicable to particular facts in issue, 32 C 82
duty of court to submit all controverted questions of fact supported by evidence, 44 C 88
error to submit claim or issue wholly unsupported by proof, 44 C 88, 49 C 388, 50 C 33, 82 C 29, 94 C 131
omission to charge on material points where jury is likely to err is ground for new trial, 49 C 138
expressions practically withdrawing from consideration of jury matters not conclusive but affecting the issue, *held* incorrect, 62 C 125
need not charge as to matter not pertinent, 70 C 265, 77 C 267
charge need not call attention to matter conceded by parties and so understood by jury, 70 C 719
need not instruct as to admissibility of evidence not objected to, 72 C 39
judge must charge on material points; not on immaterial or disputed points, 73 C 660, 83 C 174, 183
charge cannot direct a recovery on a theory other than that alleged, 81 C 403
charge may be refused respecting an element eliminated from the case, 82 C 24
if the facts are sufficient for plaintiff to maintain his action, there is no need to charge what is necessary for plaintiff to prove, 82 C 596
no charge is proper but such as is relevant to the evidence and the claims, 82 C 624, 86 C 293, 89 C 607, 90 C 701, 92 C 427
failure to charge on material points, even though not requested, may be error, 83 C 174

§ 2 Charge to Jury

to submit to jury issues not raised by pleadings is erroneous, 84 C 150
court need not charge on claim not presented by pleadings or evidence, 84 C 463, 85 C 55, 90 C 41, 94 C 613, 97 C 714, 98 C 80, 211, 100 C 599
need not charge as to elements not raised by evidence even in criminal trial, 84 C 483
charge must be confined to the legal principles applicable to the issue and facts of the case, 85 C 16, 20
where a defense prevents a recovery, one is entitled to a charge on it, 85 C 16
in absence of request to charge a particular thing or any assignment of error, criticism as to inadequacy of charge is of no effect, 85 C 55
must charge as to material issues, though no request is made, 85 C 680, 98 C 490, 499
facts presented by pleadings and evidence should be submitted even though not requested, 85 C 680
——party not required to request that certain issues exist or that they are important issues, 85 C 680
proper to mention matters about which there is no dispute, 86 C 336
may exclude count in support of which no evidence offered, 88 C 643
matters immaterial to the issue should be excluded, 88 C 657, 90 C 701
proper to charge to disregard violation of a statute not entering into the case, 88 C 701
to support a charge some reasonable basis must appear in the pleading, 90 C 41, 701
need not charge on claim on which there was no evidence, 90 C 625
must be on questions of law involved, not on all possible law, 91 C 250
cannot charge on facts foreign to the issue or on which no evidence is offered, 92 C 626
jury may be recalled and instructed not to consider negligence not set up in complaint, 93 C 99
charge is confined to matters material in determining issue upon the facts as they may be reasonably found, 94 C 197
cannot charge on what finding does not substantiate, 96 C 238
failure to make requests does not excuse failure to charge on important element necessarily involved in case, 97 C 687
submission of counts asserting alternative basis of recovery for one sum, 98 C 212
must contain basic rules for guidance of jury upon the issues, 100 C 600
must not over-emphasize some issues, 100 C 681
erroneous if it obscures or minimizes controlling issues, 104 C 355
erroneous, if it authorizes recovery upon state of facts neither alleged nor proved by plaintiff, 104 C 645
where two causes of action relied on, jury must be instructed that plaintiff can recover on proof of either, 105 C 476
duty to submit to jury no issue foreign to facts in evidence or in respect to which no evidence has been offered, 105 C 482, 116 C 678
judge not an umpire in forensic encounter of advocates; should submit to jury any issues within pleadings reasonably supported and necessary to do justice, 116 C 263
duty to submit no issue to jury foreign to facts in evidence or upon which no evidence is offered which could be reasonable basis for but one conclusion, 117 C 170
——error to submit issue not raised by pleadings or evidence, 117 C 170
——submission, while improper, might not constitute harmful error, 117 C 170
——erroneous submission of issue of contributory negligence not ordinarily reversible error, 117 C 170
court should give jury such instructions as are applicable to issues and sufficient for their guidance in deciding case before them, 121 C 334
duty of court to submit to jury no issue foreign to facts in evidence or in respect to which no evidence has been offered, 122 C 208
failure to charge as to issue directly involved is erroneous, even in absence of request, 123 C 299
not error for court to fail to charge as requested on an issue which would only have been in case had amendment to complaint been allowed, 125 C 76
reversible error cannot be predicated upon failure of court to charge upon matter not in issue, 125 C 80
submission as basis of recovery of issue not raised by pleadings or having no basis in evidence is error, 125 C 512
in determining what issues should be submitted to jury, evidence should be considered from standpoint most favorable to party, 126 C 122
charge submitting ground of recovery not raised in complaint or appearing in plaintiff's claims of proof, reversible error, 126 C 635

§ 3. Harmless Error

§ 4. ——In General

new trial not granted if misdirection worked no injury, 13 C 460, 29 C 118, 123
not error to include abstract proposition which can have no effect, 16 C 456
sufficient if jury is not misled by erroneous proposition, 16 C 456, 46 C 609
——if no omission to charge on material point as requested, 16 C 456

error harmless if the jury could not have been misled, 67 C 578, 74 C 304, 525, 82 C 518, 85 C 19, 86 C 424, 608, 91 C 668

charge to be read in view of claims of parties, 69 C 89, 83 C 208, 89 C 343

error in part may be ground for new trial, 71 C 61, 78 C 65, 198

unwarranted conclusion of trial court not reviewed unless assigned, 81 C 443

refusal of court to pass on unsound instructions no error, 81 C 626

substantial compliance with request to charge is sufficient, 82 C 653

charge is assumed correct on appeal if no question is raised, 83 C 97

an allusion in the charge is harmless when the jury has the facts before it and the judge said they must not rely on his recollections, 84 C 152

misstatement of evidence is not harmless where jury could not fail to follow it, 84 C 248

instruction given, based on exception but varying from request, harmless, 85 C 180

no error to refuse to charge as requested if incorrect and objectionable requests are mingled with correct, 86 C 23

charge cannot be complained of if it recites claim of adverse party unless all the evidence is made a part of record and it appears there was no foundation for such a claim, 87 C 341

ordinarily an erroneous charge on any material issue is ground for new trial, 87 C 652

granting inapplicable request where jury could not have been misled, 87 C 691

an involved or obscure obstruction which could not have prejudiced the rights of the appellant, is not ground of error, 89 C 607

erroneous instructions on matter that could not influence jury *held* harmless, 90 C 261

if jury are told to consider the evidence, failure to refer to one defense is harmless, 91 C 668

court's discretion in charge not reviewed, 92 C 576

that jury must have disregarded a charge must appear clearly on the record; harmful error in charge reviewable, 94 C 613

mistake as to evidence, where jury instructed that they must decide upon own recollections, 95 C 574

even mistaken assumption of facts may be harmless, if court correctly stated duty of parties, 96 C 49

misstatement of fact ordinarily harmless; not so where it practically tells jury how to decide disputed issue of fact, 97 C 475

over-emphasis of minor evidential fact is ordinarily harmless, 97 C 666

where decision depended on jury's opinion of credibility of witnesses and instructions were sufficient guide in that respect, that theory of charge is not in all respects maintainable disregarded, 99 C 597

new trial will not be granted for error in charge where harmless, 101 C 59, 109 C 401

technical accuracy and freedom from inadvertent or contradictory expressions not to be expected, 102 C 735

——sufficient if case fairly presented, so as to do "injustice" to no one under established rules of law, 102 C 735

if jury, under charge as given, must have reached correct conclusion, defect therein is not reversible error, 104 C 83

charge as to damage where defendant's judgment is upheld, 107 C 438

where issues were simple, failure of court to state in terms that plaintiff could only recover in accordance with allegations not harmful, 115 C 499

error in charge as to defendant sued for negligence not prejudicial to other defendant sued for heedless disregard, 116 C 569

in absence of appropriate assignments of error, or a showing that appellant may have suffered prejudice, omissions in charge will not be held to be reversible error, 118 C 210

if jury could not have been misled error in charge is harmless, 125 C 337

obviously inadvertent statements are rarely cause for reversal, 128 C 585

erroneous rule, emphasized repeatedly throughout charge, not the type which could be considered harmless, 129 C 607

§ 5. ——Charge to be Considered as Whole; Statements to be Read with Context

whole charge to be taken together, 16 C 455

new trial not granted if charge is not misleading as a whole, 20 C 35, 25 C 222, 493

charge must be correct, adapted to issue, and a sufficient guide, 35 C 149

want of precision; whole charge to be regarded, 37 C 309

charge must be taken as a whole and regard must be had to questions in dispute, 57 C 181

no ground for new trial that court has not charged as requested even though request proper, if charge given is proper and sufficient, 58 C 276, 62 C 124, 83 C 209, 98 C 143, 101 C 439

charge must be considered with reference to claims made on the trial, 63 C 360

——a single sentence should not be held erroneous if charge as a whole is not misleading, 63 C 361

objectionable statement which, in view of context, could not mislead, not ground for new trial, 67 C 578
if charge on the whole correct and sufficient, error as to part will be disregarded, 68 C 553, 73 C 95, 157, 667, 74 C 50, 304, 525, 75 C 254, 80 C 298, 82 C 600, 84 C 152, 85 C 359, 86 C 415, 88 C 700, 90 C 59, 91 C 6, 316
a charge correct in law and sufficient to guide jury is enough, 69 C 666, 81 C 626, 82 C 623, 84 C 269, 90 C 252, 261, 701, 92 C 427, 94 C 197
——though not in all respects exhaustive, 81 C 320
charge is to be construed as a whole, 73 C 95, 80 C 313, 81 C 22, 601, 82 C 344, 83 C 161, 84 C 153, 467, 86 C 336, 528, 87 C 363, 406, 88 C 558, 701, 90 C 59, 91 C 316, 94 C 186
charge which substantially complies with request and is sufficient to guide jury is enough, 73 C 469, 78 C 677, 79 C 659, 95 C 231
——though failing to touch upon point not made at trial, 74 C 50
——or one not pointed to in request, 68 C 274, 84 C 463, 85 C 679
error harmless where palpable error is disclosed by context; court will assume that jury were not misled, 79 C 104, 81 C 288
single sentences or statements must be read in light of context of charge, 81 C 22, 601, 82 C 519, 88 C 700, 91 C 316, 95 C 112, 187
a charge, open to criticism by itself, may be all right if read with the rest of the charge, 82 C 344, 95 C 112
if instructions as a whole are correct, deficient or inadequate statements of law in single passages not considered, 82 C 600
all sentences, extracts, and parts must be read with the charge as a whole, 83 C 161, 208
single sentences must be read with reference to the context; evidence and claims if not then misleading not open to criticism, 83 C 208
if charge as a whole is unobjectionable, error cannot be predicated on detached sentences; homicide case, 84 C 153
charge must be correct in law, adapted to the issue, sufficient to guide jury; not necessary to have it perfect, 84 C 270, 90 C 252, 92 C 427
expressions in a charge, which made subject matter obscure, are not serious if the whole statement as applied to the situation gives a pertinent principle in such a way as not to mislead the jury, 85 C 359
brief reference to principles and facts already explained are read in view of the whole charge, 86 C 416
exception to detached clauses of charge must be read with whole charge, 87 C 363
if sufficient to guide jury in particular case, good though not technically accurate in all respects, 88 C 220
charge erroneous in part, 90 C 261, 91 C 389, 395
charge in regard to matters of special defense must be read with charge as a whole, 91 C 316
sufficient, if statement, inadequate when standing alone, becomes good when read with whole charge, 91 C 316
obscure and involved passages are considered with whole charge, 91 C 389
charge to be reasonably read in its entirety, 94 C 186
error cannot be based on separate paragraphs of charge, 95 C 112
separate sentence cannot be detached from context, but must be construed with it, 97 C 713
if charge is correct, adapted to issues and sufficient for guidance for jury, failure to include specific instructions upon special features where no requests made, immaterial, 98 C 143, 101 C 52, 439, 103 C 647, 104 C 529, 105 C 482, 106 C 95, 109 C 206, 114 C 447, 473, 656, 115 C 233, 355, 116 C 213, 249, 117 C 172, 478
charge is not to be subjected to meticulous analysis in a single statement, 99 C 482
perfect accuracy, freedom from technical flaws, or from inexact, inadvertent or contradictory statements not to be expected, 102 C 735
——sufficient if charge fairly presents case so that injustice under rules of law is not done, 102 C 735
charge is to be read as a whole, not by isolated statements, 103 C 138, 108 C 163, 454, 115 C 508
defining negligence as "unintentional or imperfect performance of some legal duty" harmless in view of whole charge, 105 C 663
one misstatement not error if charge as a whole is correct and adequate, 106 C 447
isolated statement as to proof "beyond a reasonable doubt" *held* harmless, 106 C 506
if claims of appellant fully and correctly explained to jury in other portions of charge, their omission from one particular paragraph is immaterial, 107 C 91
isolated statements as to burden of proof where charge as a whole is sound, 108 C 164
charge should not be attacked as generally defective on basis of few isolated portions, 108 C 454
failure to note change in criminal law broadening it, where entire charge based on element common to both old and new, 109 C 394
inadvertent reference to negligence as an intentional failure to perform a legal duty

disregarded in view of entire charge, 114 C 415
court examines charge to see if it fairly presents case and not to search out technical flaws, 114 C 415
failure to give instructions on special features, in absence of request to charge, not reversible error if charge was correct in law, adapted to issues and sufficient for guidance of jury, 116 C 249
where court correctly charged as to negligence and contributory negligence, one ambiguous statement did not mislead jury, 117 C 172
if charge as a whole is sufficient to guide jury in deciding issues, error cannot be predicated on omission to charge on specific point as to which no charge is requested, 117 C 589
——but if matter omitted is essential to proper and complete consideration and decision of case, failure to include it, though inadvertent, is error, 117 C 589
charge will not be critically dissected for purpose of discovering possible inaccuracies, 117 C 617
——is to be considered rather as to its probable effect on jury, 117 C 617
single erroneous statement in charge is not reversible error if charge as whole correctly and adequately states rule of law, 119 C 68, 594
where charge is correct in law, adapted to issues and sufficient for guidance of jury, failure to give specific instructions on special feature as to which court not requested to charge not reversible error, 119 C 267, 121 C 512, 123 C 173, 683
it is never permissible or fair to trial court to detach certain portions of charge, incomplete in themselves, from their proper context, and present them as errors, 119 C 347, 124 C 556
isolated remarks of judge not ground of error where charge as whole is complete and correct, 119 C 395
charge that jury could draw inferences from physical facts only when they were proven beyond question, in view of charge as whole, *held* unlikely to mislead jury and not reversible error, 119 C 591
single erroneous statement not ground of reversal if on whole case is so submitted as to do justice to parties, 119 C 594
in absence of request, only question is whether charge was correct in law, adapted to the issues and sufficient to guide the jury, 120 C 57, 264
where charge repeatedly stated correct principle, one statement capable of incorrect interpretation nil sig., 121 C 397
in determining if there is harmful error, charge must be considered as whole, 124 C 174, 653
where no requests to charge, question is whether charge read as whole was correct in law and adequate as guide to jury, 125 C 181
error will not be found in failure to give instructions as to special feature, in absence of request, 126 C 320
——where plaintiff contended that court should have charged as to inference to be drawn from failure of defendant to call certain witness, situation peculiarly within rule, 126 C 320
failure to give instructions on special features where no request, not reversible error where charge as whole was adequate, 126 C 484
in determining if error was harmful, charge must be considered as whole, 127 C 425
test is whether charge read as a whole was correct in law, adapted to issues and sufficient for guidance of jury, 129 C 321
charge to be considered as whole, 129 C 528
error cannot be predicated on omission to charge on specific point as to which no instruction is requested if charge as whole is sufficient, 129 C 555
——but where omitted instructions essential to proper determination of case, failure to include them is error, though court's attention has not been called to point by request or otherwise, 129 C 555
where charge fairly presents essential issues, error will not be found in failure to give specific instructions on special feature in absence of request, 129 C 692

§ 6. ——Error as Affected by Verdict

new trial not granted if apparent that the verdict must be the same, 24 C 90
charge presumed to aggrieve defendant if a larger verdict follows instructions than that returned before them, 46 C 406
errors as to count on which appellant prevailed, 77 C 398
charge proceeding on wrong theory harmless where verdict is correct, 80 C 14
submitting construction of written instrument to jury where they arrive at correct decision, 81 C 310
where verdict equals amount erroneously included in charge, with interest, harm appears, 81 C 479
whether requests or instructions relating to incomplete performance were correct or not unimportant where jury found contract fully performed, 85 C 184
failure to comply with request to charge is of no importance if verdict negatives existence of subject matter of request, 86 C 265
erroneous charge harmless if it could not affect verdict though it might have had a bearing if jury found differently, 88 C 115
verdict for defendant cures errors in charge respecting damages, 91 C 581

submitting question of law to jury, if verdict shows that they decided it correctly, is harmless, 92 C 658

where court, in stating possible finding of jury as to payments made on account, names two sums, one of which is wrongly stated, it is harmless if verdict shows that jury adopted one correctly stated, 93 C 241

if plaintiff alleges contract of indemnity and has verdict, charge as to the effect of different contract set up in answer is immaterial, 93 C 412

where verdict reached is only one possible on facts, errors in charge unimportant, 93 C 669

where court states two causes of recovery and general verdict is given, error in charge as to one is immaterial, 94 C 690

errors in charge immaterial if verdict is properly directed; judge need not explain directed verdict, 95 C 252

if jury did not reach question of defendant's damages, no error in not considering charge as to counterclaim, 95 C 530

where general verdict is rendered in case involving several claims by plaintiff, if anyone is correctly submitted, errors as to others is immaterial, 95 C 724

error as to one of two causes of action joined in one complaint where there is general verdict for plaintiff, 98 C 52, 305, 653

submission of legal questions to jury harmless if result is correct, 98 C 314

submitting issue of law to jury where they reach correct conclusion, 99 C 405

——whether employees of carrier are engaged in work related to interstate commerce, 99 C 405

charge de plaintiff's damages not reviewable, where verdict for defendant, 101 C 603, 103 C 267

where charge eliminated issue of wilful injury but charged as to supervening negligence in such a way that verdict for defendant necessarily negatived wilfulness, 102 C 677

leaving construction of contract to jury where verdict eliminates issue, 104 C 24

failure to charge that verdict of simple or aggravated assault possible, *held* harmless where verdict of robbery by violence returned, 105 C 757

charge as to damages where defendant's judgment is upheld, 107 C 438, 115 C 713

error in charge as to res ipsa loquitur where it is evident that jury determined issue of negligence against plaintiff, 108 C 116

verdict may render harmless charge upon subjects which have no place in the case, 108 C 126

as to interpretation of contract, where jury gave it only proper legal meaning, 108 C 126

error in charge as to damages where verdict determines issue of liability for defendant, 115 C 713

where both negligence and wanton misconduct are alleged and there is general verdict, an error as to one cause of action will not avail appellant if there was no error as to other, 116 C 48

even if charge de duty of railroad to keep station and approaches reasonably safe had been inaccurate, it was harmless error as jury found plaintiff guilty of contributory negligence, 116 C 389

where no error in charge de negligence and verdict was general, any error in charge dealing with cause based on reckless misconduct would not result in new trial, 116 C 471

where verdict in companion case necessarily imported that defendant was not negligent, erroneous charge removing plaintiff's contributory negligence from jury, harmless, 118 C 154

——so also as to charge de location of intersection, 118 C 154

error in charge as to damages harmless where verdict was for defendant, 118 C 214

where verdict of jury must have found issue of facts submitted to them in accordance with legal result of undisputed facts, error in submitting question harmless, 119 C 450

de evidence of medical experts, harmless to plaintiff in view of defendant's verdict, 121 C 261

where defendant's verdict was general and issues were reckless disregard and agency, verdict might have been based on former and errors in charge as to agency not reversible, 121 C 316

charge such as plaintiff argued for would not have availed to impose legal liability upon defendant, in view of what jury must have found from verdict, 122 C 142

where there was general verdict error in charge as to one count only was harmless where no error as to cause under second count, 122 C 500

when there were two separate defenses, verdict for defendant was general and plaintiff did not request jury to state on which defense verdict was based nor request interrogatories, Supreme Court did not consider correctness of charge on one defense where there was no error in other, 125 C 77

where two distinct causes of action are alleged in one count, error in charge upon one would not result in new trial if no error upon other, 125 C 157

where only possible basis of liability was assault by agents, either employee or police supernumeraries paid by it, general verdict for plaintiff did not obviate error in charge

de liability for acts by supernumeraries as its agents, 125 C 705

where general verdict against hospital may have been based on ground as to which no error in charge was committed, the negligent employment of incompetent servants, it must stand though court erred in charge which would have affected other ground, alleged breach of contract through negligence of employees, 127 C 194

where two counts erroneous, charge on one count only not ground for reversal where there was general verdict for plaintiff, 129 C 403

§ 7. ——Immaterial or Undisputed Matter; Trivial Inaccuracies

new trial not granted for refusal to charge on immaterial point, 27 C 639

error as to point not in issue harmless, 70 C 398, 77 C 150, 78 C 18

——or one not supported by evidence, 77 C 572

——failing to charge as to admitted fact, 71 C 569, 83 C 183

——so error as to weight of evidence as to such fact, 78 C 18

——or as to burden of proof of fact clearly established, 78 C 430, 82 C 595

if charge presents correctly substance of requests, slight inaccuracy will be overlooked, 80 C 553

error harmless where there is a slight inaccuracy in a single sentence, 81 C 218, 83 C 466, 86 C 265, 87 C 253, 341, 88 C 177

failure to charge on immaterial and undisputed facts *held* harmless, 83 C 183

mere verbal errors in a charge are immaterial, 87 C 173

slight verbal inaccuracy does not mislead jury, 88 C 178

error as to issue disregarded by jury harmless, 88 C 558

——or as to one not material to verdict, 74 C 443, 82 C 595, 83 C 183, 85 C 180, 87 C 406, 88 C 117, 620, 90 C 261, 91 C 186, 581

——so failure to charge as requested where jury clearly adopted law of request, 71 C 551

——or it would not have availed appellant, 72 C 402

no error not to charge on immaterial matter, especially in absence of request, 91 C 186

failure to charge as to claim of law not made, 91 C 250

submitting to jury issue not raised by parties in evidence introduced is harmful, 92 C 626

erroneous assumption of trivial fact, where charge leaves facts to decision of jury harmless, even in murder case, 93 C 328

harmless to charge what every witness testified to, 94 C 196

inadvertent statement of doubtful meaning disregarded where matter otherwise fully covered, 97 C 381

allusion to "inevitable accident" *held* harmless under circumstances, 98 C 145

mere inadvertent inaccuracies are not reversible error, 98 C 610, 99 C 423

slight or trivial inaccuracies not reversible error; but contradiction upon vital point is, 99 C 423

to commit to jury an immaterial issue outside of pleadings which might be decisive of case is harmful, 100 C 748

charging erroneously as to issue not in case, 105 C 373

error to read to jury statute not applicable to evidence; but may be harmless, 105 C 689

slight misquotation of statute, 109 C 489

erroneous charge on claim not made *held* not to have confused jury on real issue which was correctly charged, 111 C 317

while submission of issue not raised by pleadings or which has no reasonable basis in evidence is improper, it may not be harmful error, 117 C 170

——so such submission of issue of contributory negligence ordinarily not erroneous, 117 C 170

instruction to disregard statement by defendant's counsel as to matter which became immaterial, harmless, 118 C 312

statement in charge that certain matter is undisputed, harmless where it was only reasonably possible conclusion and no attempt was made to dispute it, 120 C 39

though court, in stating claims of parties included fact as to which there was no evidence, Supreme Court assumed that jury would disregard the claim, 120 C 622

trivial wrongful assumption of fact in charge will not be treated as reversible error, 121 C 331

——but where assumption goes to vital point in case it may be ground of reversal, 121 C 331

inadvertently inaccurate statement extracted by critical dissection not reversible error unless it was probable that jury were misled, 121 C 397

error in submitting irrelevant issue to jury requires new trial only when calculated to prejudice rights of appellant, 125 C 512

——so where issue was speed of automobile reading of whole statute including part relating to coasting and defective brakes, harmless error, 125 C 512

submission of issue foreign to facts in evidence not necessarily error; only so if likely to produce prejudice; reference to "unavoidable accident," 127 C 285

§ 8. ——Error Corrected In Another Part of Charge

charge erroneous in part but cured by other parts so as not to mislead is not ground for new trial, 55 C 344, 59 C 401

a single incorrect statement inadvertently made in charge, where correct principle is afterwards plainly and repeatedly stated is not a ground for new trial, 62 C 525

an error in charge as to burden of proof may be fatal, though rule elsewhere correctly stated, 69 C 219

later incorrect statement will be considered misleading, though correct rule first stated, 74 C 177, 75 C 326

——and later correction will not always remedy an earlier statement, 71 C 61

if charge correctly states burden of proof, not objectionable if a single expression by close analysis and criticism might be erroneous, 86 C 263, 90 C 261

error in earlier portion may be corrected by later statement, 91 C 395

omission of word or two, where context makes meaning clear, is harmless, 95 C 187

——so, incomplete and therefore incorrect statement in one place, where full explanation is elsewhere and repeatedly given, 95 C 187

irrelevant, obscure and confusing instructions are immaterial where those finally given are correct and verdict shows jury were not misled, 95 C 388

——greater effect of final instructions, 95 C 398

immediate correction of erroneous statement as rescinding error, 95 C 484

charge omitting contributory negligence from consideration is erroneous but if later corrected it is harmless, 97 C 286

inadvertent remark as to matter repeatedly stated correctly, 98 C 609

——in defining standard of care as that of person of plaintiff's class and condition, 98 C 609

charge that driver of automobile must so manage it as not to injure anyone is improper but harmless in view of rest of charge, 106 C 448

placing burden to prove alibi on accused, where error was immediately corrected, 108 C 53

error as to rule de notice harmless where court finally charged rule not applicable to case, 108 C 117

informal response at suggestion of counsel, improper in itself, *held* harmless in view of preceding charge, 113 C 355

failure to refer to contributory negligence in stating necessary facts to establish liability, harmless in view of later presentation of issue, 115 C 508

failure to refer to contributory negligence in stating issues to be decided where later full charge given as to it, 115 C 715

erroneous charge corrected by later one given on recall of jury for that purpose, 116 C 102

failure to make interim statement as to counsel's questions no error when matter covered in final charge, 128 C 180

§ 9. ——Charge Favoring Appellant

appellant cannot object if charge is more favorable to him than it should be, 82 C 199, 83 C 160, 90 C 59, 91 C 188, 316, 92 C 315, 93 C 126, 666, 97 C 666

defendant cannot complain of charge that puts greater restrictions on plaintiff's recovery than do his own requests, 82 C 647

defendant cannot complain if requests are complied with to the effect that if plaintiff's negligence in any way contributed he could not recover, 96 C 41

losing party cannot complain of charge beneficial to him, 103 C 267

defendant cannot complain of instructions which tend to lessen his responsibility, 104 C 54

appellant cannot complain of charge prejudicial to appellee, 104 C 83

defendant cannot complain of instructions too favorable to him, 104 C 674

defendant cannot complain of omission to charge as to elements increasing his liability, 105 C 528

defendant cannot complain of instruction on damages too favorable to him, 106 C 551

where rule of damages is twice given correctly inadvertent statement at another place disregarded, 109 C 164

too favorable instruction not ground for error, 111 C 322

——permitting set-off not allowable in law not harmful to appellant, 111 C 322

claim that issue not in case was given so much prominence as to submerge real defense, though otherwise favorable to defendant, 111 C 322

appellant could not complain of charge that if, at instant his truck turned left, the plaintiff's car was about to enter intersection, then latter was guilty of negligence, when this more favorable than request to charge, 117 C 607

where charge was either correct or more favorable to appellant than he was entitled to, error is harmless, 123 C 26

where doctrine of last clear chance was not applicable, to give any instructions about it was too favorable to plaintiff, and she cannot complain if charge was too narrow in stating conditions for application of doctrine, 123 C 205

§ 10. ——Miscellaneous Cases

when new trial granted for error in charge against codefendant against whom no verdict rendered, 19 C 325

if charge states the law correctly it is immaterial that wrong references to statutes and decisions of other State were given, 57 C 181

remark of court in admitting testimony that "he was inclined to think he was overruling the Supreme Court," ground for new trial, 63 C 49

charging that several counts state but one offense, 75 C 269

if the jury is not misled by inadvertent substitution of word "defense" for "plaintiffs" error is harmless, 79 C 108

palpable error of stenographer in use of word "with" for "without," where error is plain, mistake in date, etc., of paper later corrected, will be disregarded, 81 C 218

a charge as to contributory negligence need not be repeated when instructing as to defendant's duty, 81 C 492

harmless to charge that if a fact was found, a certain result would follow, instead of assuming the fact according to a request, 82 C 116

if jury finds verdict based on adverse possession, errors committed on evidence and charge as to title by deed immaterial, 82 C 595

erroneous instruction that increases damages slightly, harmless, 83 C 208

where a charge has been properly given using the word "might," it is not harmful afterwards to use the word "should," 83 C 466

no error in charge to omit reference to contributory negligence when discussing other grounds of negligence if it is elsewhere considered, 84 C 248

after stating all the elements in a crime, it is not error to omit one later on, 84 C 411

in case of ejectment with defense of ouster of plaintiff's grantor, 84 C 569

charge that plaintiff had made out a prima facie case unless defendant had shown something to defeat it, can be criticized as changing burden of proof, but it was harmless in ejectment case, 84 C 570

a clause in a charge while not well chosen *held* not to mislead jury, 86 C 252

no error to read record of former case in connection with claim of res adjudicata, 86 C 579

harmless to erroneously leave with jury a question if they found correctly a breach of duty irrespective of it, 87 C 149

no error for failure to state maximum amount that one could recover, 87 C 150

no error to leave out certain words in a statute as to negligent operation of an automobile, 87 C 253

charge that relationship between savings bank and depositor is that of debtor and creditor is incorrect but harmless where the question is whether orders for paying out money were forged, 87 C 341

failing to charge as to equipoise of evidence, where charge correct as to burden of proof, 87 C 363

statement intended as a caution to jury *held* not to harm defendant, 88 C 214

instruction harmless if jury finds death due to plaintiff's own negligence, 88 C 558

where defendant deprives himself by election of right to damages for delay, instructions on this subject are harmless, 88 C 620

charge *held* to cover all law applicable to case, 90 C 497

calling particular attention to element of damages not properly recoverable, with statement as to lack of evidence as to it, *held* harmful, 91 C 407

in spite of error *held* jury could not misunderstand, 91 C 668, 92 C 578

stating that one was secretary and director when he was only secretary, *held* not to have misled jury, 92 C 39

placing duty of defendant upon wrong theory, *held* harmless, 92 C 314

charge authorizing jury to treat alleged intentional wrongdoing as an accident, not warranted by evidence, is misleading, 92 C 388

statement as to right to take plaintiff's testimony where defendant offers none, bad, but may not be prejudicial when read with rest of charge, 92 C 427

use of phrase "unusual care" in negligence action *held* harmless, 93 C 251

where negligence alleged was in "operating" gates at railroad crossing, use of words "maintain and operate" in one place, immaterial, 93 C 439

reference to charge given same jury in another case, harmless if essential part is repeated, 93 C 600

using "defendant" for "plaintiff" where context makes meaning clear, 94 C 614

to submit to jury claim of wanton misconduct not supported by any evidence is error, 95 C 440

in negligence action, to charge that violation of certain rule of road not applicable to situation might be basis of liability, is error, 96 C 22

to base charge upon mistaken assumption of automobile driver's familiarity with conditions from previous experience is immaterial where he admits seeing them on occasion in question, 96 C 41

in criminal case, charge placing too broad construction on statute, where accused admits facts establishing guilt under proper construction, 96 C 107

use of word "visible" instead of "clearly visible" in charging as to statute, where fact that automobile was clearly visible was apparent, harmless, 97 C 149

expression of doubt by trial judge as to where burden of proof rested harmful; court could not say that it might not have misled or confused jury, 97 C 175

to quote request to charge that plaintiff entitled to recover on proving any one of several grounds of negligence, without mention of contributory negligence, harmless in view of rest of charge, 97 C 282

error as to charge in regard to abandonment of criminal purpose by one of several who had conspired, harmless where there was no reasonable evidence of abandonment by any, 97 C 322

charge that jury must "feel an abiding sense" of truth of plaintiff's proposition is error, 97 C 475

failure to properly define intersection of streets where on every theory vehicle passed to its left, 98 C 74

in negligence case remark that there are such things as inevitable accidents, 98 C 141

——but quaere, where there are repeated references to inevitable accident and negligence of defendant is substantially admitted, 98 C 588

characterization of conspiracy to commit burglary as one to rob, 98 C 807

where negligence, contributory negligence, etc., are fully explained, error will not be based on meticulous analysis of single statement, 99 C 475

references to verdict in other States in personal injury cases, where court feared an excessive verdict, 100 C 617

erroneous charge de Statute of Frauds harmless where jury found no promise of any kind made, 101 C 54

statement that at time of injury it was "totally dark" harmless though somewhat exaggerated, 102 C 162

charge that there was no evidence on certain point where evidence could not have effect claimed by appellant, 102 C 162

charge that plaintiff must prove all allegations of complaint including several kinds of negligence, where on whole jury could not have been misled, 102 C 735

charge merely making burden of proof more onerous, 103 C 716

treating liability for defect in highway as negligence where real issues were submitted, 104 C 84

——so charge in such case as to concurring causes where verdict showed jury found essential facts, 104 C 84

failure to refer to certain specifications of negligence in complaint harmless where generally included in others referred to and attention was called to complaint, 105 C 49

failure to amplify instructions de grounds of negligence, in absence of requests to charge, not harmful, 105 C 410

failing to give charge as to effect of plaintiff making defendant her own witness, 105 C 453

defining negligence as "unintentional or imperfect performance of some legal duty" harmless in view of whole charge, 105 C 664

failure, in charge to jury, to fully define "impeaching" testimony, 105 C 757

error in charge as to concurrent negligence vitiates verdict for one defendant though other was held liable, 106 C 86

omission to charge that proof of loss under insurance policy must be sworn to, harmless, in absence of evidence on issue or requests, and with policy in evidence, 106 C 119

charge that certain evidence would "probably justify certain finding," where it amounted merely to saying jury might find that fact, 106 C 120

as to alibi, statements as to proximity of accused to crime, where on his own testimony no question as to this could be raised, 106 C 260

unnecessary repetition of defendant's standard of duty *held* harmless, 106 C 302

failure to charge as to statutory rule governing operation of automobile where it coincides with common-law rule stated, 106 C 384

charge that duty on driver of automobile so as to manage it as not to injure anyone *held* harmless in view of rest of charge, 106 C 448

exclusion of certain letters of plaintiff and replies which tended to contradict his claim of lack of knowledge *held* inconsequential, 107 C 380

charge failing to define contributory negligence as material or essential harmless where that was the only kind of negligence attributable to plaintiff upon the facts, 107 C 437

defects in charge as to ratification of act nil sig. if jury could not reasonably find such ratification to have taken place, 107 C 562

error in charge as to contributory negligence harmless as regards defendant where that issue not properly in case, 107 C 568

in charge as to contributory negligence of child of ten, characterizing him as "immature," 108 C 484

charge in negligence action failing to call attention to one of the specifications of negligence, 108 C 544

charge of arson under amendment of 1927

when information was brought under § 6231, Rev. 1918, was harmless error, 109 C 394

charge describing wanton misconduct as implying willingness to inflict injury, harmless error, 109 C 428

failure to distinguish between probative value of evidence as such and admissions, 112 C 299

charge in negligence case that law assumed defendant not to be to blame till plaintiff proved it, 112 C 300

where number of articles delivered was material to damages, incorrect statement in charge that there was no serious difference between parties as to this, *held* error, 113 C 223

inclusion in general statement of rights and duties of stockbroker of inapplicable rules of law, harmless, 113 C 370

where issues were simple, a failure of court to charge that plaintiff could only recover in accordance with allegations of complaint, *held* harmless, 115 C 503

where court charged with unnecessary fullness as to one aspect of case, but was correct in law, no error can be claimed as to it, 116 C 144

erroneous charge de supervening negligence *held* not harmless, 116 C 262

mere failure of court to characterize case as one under statute de injuries from sidewalks, rather than common-law negligence, no ground for reversal, 116 C 565

where court instructed as to different theories on which two defendants were sued, one for heedless disregard and the other for negligence, particular expression "negligence of defendants" could not have misled jury, 116 C 569

court told jury that duty of guest in car was very light, etc.; *held* failure of court to charge that she was not guilty of contributory negligence as matter of law not reversible error, 117 C 170

appellant could not complain of charge that if at instant his truck turned left, the plaintiff's car was about to enter intersection, then latter was guilty of negligence, when this more favorable than request to charge, 117 C 607

instruction that certain conduct, if negligent, would be reckless misconduct within statute and that violation of statute would be negligence, was harmless, 117 C 612

where evidence was admitted subject to subsequent proof connecting it with accident which was not offered, failure of trial court to instruct jury to disregard it, in absence of request, *held* not ground of new trial, 117 C 689

reference in charge of enmity between parties and witnesses and direction to jury to disregard, not harmful to defendant, 118 C 311

submission of issue of contributory negligence to jury when court might properly have charged on it as matter of law not deemed harmful error, 118 C 471

where issue of contributory negligence determinative of verdict, error in charge as to it harmful, 118 C 681

where both parties claimed the other to be negligent, defendant not harmed by failure to instruct jury that if they found neither negligent they should give verdict for plaintiff on complaint and defendant on counterclaim, 119 C 262

where court instructed jury that plaintiff could not recover if he was negligent, failure to instruct them that plaintiff could not recover if his negligence concurred with that of defendant, *held* harmless, 119 C 310

malpractice for removing moles; if lack of consent was established removal of moles was trespass entitling plaintiff at least to nominal damages; charge that both lack of consent and special damages alleged must be proved, erroneous, 119 C 492

——but as prejudice to plaintiff limited to loss of verdict for nominal damages and costs, it was not reversible error, 119 C 492

failure to charge as to exception in Statute of Frauds of articles specially manufactured for buyer not harmful to defendant buyer, 121 C 397

though defendant did not claim contributory negligence, submission of that issue to jury not reversible error, 121 C 511

where trial court did not charge as to effect of emergency on conduct of motorman, failure to state exceptions to the rule of no consequence, 121 C 513

inadvertently referring to "defendant" instead of "plaintiff," 122 C 368

beginning charge by saying "If you are all like I am, you want to see the plaintiff win this case. I do," unfortunate, but whether reversible error, quaere, 123 C 81

inadvertent transposition in phrase used by court describing plaintiff's duty, not sufficient to mislead jury, 123 C 173

where no error claimed on appeal in charge on defense of ratification, which was determinative of case, any errors in instructions on other issues not reversible, 124 C 202

charge that if jury decided moon was made of green cheese, it was an unfortunate hyperbole but harmless when later they were told that their decision must be based on the evidence, 125 C 535

inapt and unfortunate illustration held harmless when considered with rest of charge, 125 C 670

charge de causal feature of contributory negligence, where if plaintiff was negligent in failing to see screw which caught her foot, it must have contributed to her fall, 126 C 97

erroneous charge as to jury's right to draw inferences from reactions of witnesses about courtroom harmless, as it did not appear to what court referred, 126 C 258

jury not misled by failure to charge that vital question was whether floor was wet and slippery, 127 C 425

erroneous charge de right of way not rendered harmless by further charge that regardless of who had it each must use reasonable care, 127 C 450

where verdict for plaintiff stands, any error in charge as to damages on counterclaim not considered, 128 C 104

charge de statute on signal for stopping or turning which, though inaccurate, could not prejudice defendant, 129 C 122

§ 11. Negligence

§ 12. ——In General

not the duty of court to charge that if jury find certain facts they are to find negligence, 28 C 264

court should not state that certain facts, if proved, constitute negligence, 54 C 173

omission of "impartial" in connection with "reasonable" in charge de probable cause, *held* no error, 56 C 498

it is unnecessary to repeat, in connection with each aspect of the case, that plaintiff must prove freedom from negligence, 82 C 199, 84 C 248

in absence of request it is not error to neglect to charge standard of duty required if sole cause of injury is stated to be negligence of plaintiff and want of care of defendant, 84 C 345

should instruct jury as to standard of duty the law imposes, not particular acts that constitute the performance or nonperformance of it, 85 C 641

specifications of negligence in complaint need not be paraphrased and the jury told that evidence failed to prove same, 88 C 225

need not call jury's attention to each separate issue of negligence, 88 C 226, 98 C 145

charge that sufficiently states the law of proximate cause, 88 C 495

charge correct that states we owe care of a reasonably prudent person to those who may come into contact with us or with the instrumentalities operated by us, 89 C 697

where both parties agree as to acts that constitute want of ordinary care, no need in charge to distinguish as to degree of care imposed on defendant, 92 C 604

not necessary to define "contributory negligence" if charge explains respective duties of parties, 94 C 168

error to charge that unless there is contributory negligence, verdict must be for plaintiff, 95 C 466

charge which purports to state grounds of negligence must include all, 95 C 520

correct to leave with jury degree of care required of child, 95 C 617

some conduct may be so obviously negligent as to justify its being described as such in charge, 97 C 273

in cause of action involving negligence and nuisance failure to charge de former ground for new trial, 98 C 523

to confine attention to jury to one phase of case on issue of contributory negligence *held* erroneous, 98 C 584

——so charge repeatedly calling attention to "inevitable accident" where negligence substantially admitted, 98 C 584

error to fail to give jury test to determine legal liabilities, 99 C 233

——desirable to reduce contested issues to narrowest possible scope, 99 C 233

where "negligence," "contributory negligence" and "condition," as distinguished from "cause," are sufficiently defined, subjecting one statement as to one term to meticulous analysis, not ground for new trial, 99 C 475

in certain definite situations constantly recurring court may charge that certain conduct is negligence, 99 C 475

charge that plaintiff cannot recover if guilty of "any" negligence contributing "directly to his injury" is too favorable to defendant, 100 C 170

not necessary to define contributory negligence if essentials are properly presented to jury, 100 C 170

——having defined negligence in earlier portion of charge, court may simply speak of "negligence" contributing to injury, 100 C 175

concurrent negligence, 100 C 486, 511

in clear case court should charge that plaintiff not guilty of contributory negligence, 100 C 510

only such acts of negligence as plaintiff offers evidence to prove or claims to have proved need be noticed, 100 C 596

——contributory negligence always an issue, 100 C 596

——but if no claim made as to it, jury may be told to lay it out of case; otherwise appropriate instructions must be given, 100 C 596

——not necessary formally to define negligence or contributory negligence, but sufficient explanation of duties of parties in premises must be given, 100 C 596

reference to verdicts in other states in personal injury cases *held* harmless where court feared excessive verdict, 100 C 617
if one of issues is cause of injury "proximate cause" should be explained in connection with claims of parties, 101 C 545
where facts might have justified charge as to concurrent negligence but evidence did not necessarily present issue, not error not to charge as to it in absence of request, 102 C 735
if contributory negligence properly presented court need not charge specifically upon applicable statute, 103 C 547
——as in case of pedestrian crossing street, 103 C 547
as all evidence is circumstantial, not error to refuse to charge that contributory negligence may be proved by such evidence, 105 C 49
unnecessary repetition of statement that defendant bound to use a very high degree of care not error, 106 C 302
court must refer in negligence action to statute applicable to case, 106 C 383
——but not to do so *held* not error where statute merely stated common-law rule fully charged, 106 C 383
issue of contributory negligence necessarily involved in consideration of claim of negligence and charge must include it, 106 C 728
proper charge where no claim of contributory negligence is made, 106 C 728
brevity and simplicity in charge are desirable, 108 C 95
——but should not extend to failure to give jury adequate guidance in fundamentals, 108 C 95
——as explanation of contributory negligence and proximate cause, 108 C 95
though contributory negligence not in issue, failure to grant request that it be not considered by jury, is not error, 108 C 191
jury should be charged on contributory negligence even though defendant offers no evidence of it, 108 C 544
calling jury's attention to only two of three alleged grounds of negligence *held* not erroneous, 108 C 544
discretion of court to refer in detail to each specification of negligence where trial is before jury, 108 C 547
request to charge as to contributory negligence should be limited to such as contributes directly, materially and essentially to injury, 109 C 87
court not obliged to charge on supervening negligence when not presented as issue in pleadings or by request to charge, 109 C 206
charge that plaintiff must prove all allegations of negligence, *held* error, 109 C 222
proximate cause, where this was not a contestable issue in the case, 111 C 580
phrase "substantial factor" in charge ordinarily does not require explanation, 112 C 300
causal connection of contributory negligence must be same as in case of negligence of defendant, 112 C 421
——sufficient to charge that it will defeat recovery if it substantially contributes to result, 112 C 421
restricting right to recover to particular allegations of negligence; proximate cause, 112 C 686
foreseeability of negligence of third party in connection with concurrent negligence and proximate cause, 113 C 355
charge need not necessarily go into details as to evidence upon every element involved, 113 C 457
where claim of intervening act was not made at trial, failure to charge concerning it not ground of appeal, 114 C 56
intoxication as affecting contributory negligence, 114 C 383
instruction to jury amounting to statement that the phrase "substantial factor" is so clear as to need no exposition, upheld, 114 C 415
suggestion to jury that as ordinarily prudent men they place themselves in position of defendant, upheld, 114 C 420
failure to refer to issue of contributory negligence in portion of charge dealing with plaintiff's negligence cured by later dealing with this subject, 115 C 714
contributory negligence as not barring recovery where defendant is guilty of wanton misconduct, 116 C 48
that if decedent was guilty of even slight negligence which materially contributed to accident there could be no recovery, correct, 116 C 389
proximate cause stated in accordance with rules, 118 C 128
no error in charging that if jury found defendant to be reckless, contributory negligence of plaintiff's decedent would not bar recovery, 123 C 205
charge that negligence must have been a substantial factor in bringing about injuries sufficient, in absence of request, 125 C 446
court's abbreviated statement de plaintiff's duty to anticipate presence of danger, not erroneous, in view of rest of charge, 126 C 96
reference to plaintiff's negligence "which possibly contributed to her injuries" and that jury must find that she was not guilty of "some" negligence, not misleading, in view of other parts dealing with causal feature, 126 C 97

where only question is whether negligence of plaintiff defeats recovery, the situation calls for no charge as to concurring negligence, which becomes an issue only as to the conduct of two or more defendants, 126 C 400

ultimate test of contributory negligence which bars recovery is whether it was substantial factor in producing injury; where issue is one of fact its submission to jury on that basis will suffice, 127 C 85

——it is only when further explanation is necessary, in order to enable jury intelligently to apply test in particular circumstances, that court need go further, 127 C 85

while in one place court charged plaintiff could not recover if his own negligence contributed to injury, on three subsequent occasions it added "materially" to "contributed"; *held* charge considered as whole was sufficient, 129 C 526

——use of words "substantial factor" not necessary, 129 C 529

one purpose of requiring specific allegations of negligence in complaint is to enable court to determine what issues to submit to jury, 129 C 526

——unless by allegations or request to charge it is informed as to claim, it is justified in not submitting it to jury, 129 C 526

——so where complaint went into particulars of negligence and ended with general allegation but there was no allegation of negligence in not having charged wires removed and no request to charge, court justified in failing to charge as to such negligence, 129 C 526

usual form de negligence, proximate cause and contributory negligence; variation not wise but sustained, 129 C 692

§ 13. ——Last Clear Chance Doctrine

charge on "last clear chance doctrine" *held* too favorable to plaintiff, 90 C 702

cannot charge on last clear chance doctrine if there is no evidence to support it, 92 C 627

——instruction *held* too vague and general, 92 C 627

"last clear chance doctrine" must be explained, 95 C 466

proper to instruct as to, though issue not raised by pleading and in part dependent upon proofs of defendant, 99 C 447

having once explained "last clear chance" doctrine sufficient thereafter to refer to it without full explanation, 99 C 447

"case is reducible to this simple proposition of last clear chance" *held* not to eliminate all other questions, 99 C 453

whether neither plaintiff's nor defendant's claims nor both together show state of facts which raises last clear chance doctrine not necessary to charge as to it, 99 C 723

charge should touch on last clear chance only when it is applicable to the facts, 99 C 726

charge requiring plaintiff to prove that motorman "actually knew" that there was danger of accident erroneous, 102 C 677

where verdict was for defendant, charge that allegation of wilful striking merely introduced doctrine of supervening negligence harmless, as under charge verdict necessarily negatived wilful injury, 102 C 677

doctrine of last clear chance not overemphasized though repeated several times to jury, 104 C 229

jury should not be instructed de last clear chance, where not applicable to evidence, 105 C 373

duty to charge upon last clear chance doctrine when it is involved in the case and when requested, 107 C 126

statement in charge that doctrine probably not applicable with later charge to effect that if both parties were negligent, verdict must be for defendant, *held* to take issue from jury improperly, 107 C 126

charge on last clear chance erroneous unless all four conditions stated and properly applied to facts, 108 C 133

court not obliged to charge on supervening negligence when not presented as issue in pleadings or by request to charge, 109 C 206

charge *held* erroneous where it imposed absolute duty on motorman to stop when he saw plaintiff in zone of danger and not likely to escape, 109 C 222

last clear chance in trolley accident; zone of danger, 110 C 615

charge sufficient to enable jury to apply law of proximate cause and contributory negligence without stating doctrine of last clear chance, 111 C 41

charge as to supervening negligence in automobile collision upheld, 111 C 101

last clear chance doctrine; pedestrian running into street in path of automobile, 111 C 219

charge *held* to have adequately presented all four conditions of doctrine, 112 C 300, 670

in charging as to last clear chance better to make distinct reference to doctrine in summing up, 112 C 687

last clear chance; duty of truck driver to pedestrian; recklessness as a high degree of negligence, 114 C 85

straight road, clear night, good lights on defendant's car entitled defendant, whose horse was struck, to charge on supervening negligence, 114 C 383

charge de doctrine of last clear chance *held* not necessary in street intersection case under circumstances, 115 C 295

plaintiff failed to show how far away train was when deceased's truck came within

zone of peril; *held* court was correct in charging that doctrine of last clear chance was not applicable, 116 C 127

trial court need not submit doctrine of supervening negligence unless invoked as issue in case in complaint or by claim on trial, 116 C 262

——but if pleadings furnish basis for it he may submit issue though it is not invoked, 116 C 262

court adopted correct and wise course in failing to refer to doctrine of last clear chance where to do so would involve useless explanation, 116 C 471

where defendant's car was but twelve feet behind plaintiff and going twenty-five miles an hour when latter turned suddenly without warning in front of it, doctrine not applicable, 117 C 534

in determining whether plaintiff is guilty of contributory negligence, there may be situations where defendant may claim such negligence arose from plaintiff's failing to avoid accident after defendant, by own negligence, came into position of peril, 119 C 262

——but no purpose would be served by charging on doctrine where plaintiff makes no claim to recover on it, 119 C 262

——and defendant not entitled to instruction on counterclaim where claims of proof were that he was not negligent, 119 C 262

pedestrian and automobile case; court did not err in not charging as to possible application of doctrine, 122 C 615

unnecessary to specifically charge that doctrine not applicable, where, though it was alleged, neither party claimed it, 123 C 49

where doctrine was not applicable, to give any instructions about it was too favorable to plaintiff, and she cannot complain if charge was too narrow in stating conditions for application of doctrine, 123 C 205

car struck pedestrian who was crossing street and was not seen by driver until within four feet of him; doctrine of supervening negligence not in case, 123 C 291

where no claim as to distance in which defendant's truck could have stopped and where both vehicles continued in motion on their courses until moment of collision, no basis for doctrine, 125 C 558

collision between trolley and automobile which could not get off tracks; question for jury whether motorman should have become aware that driver could not escape peril and whether subsequently former could have avoided accident; charge de last clear chance should have been given, 126 C 124

where no claims of proof to support doctrine and neither party made claim under it court correct in telling jury it had no application, 126 C 246

——in no event could defendant complain, as doctrine is for plaintiff's benefit, 126 C 246

——where admittedly no contributory negligence, no occasion to refer to doctrine, 126 C 247

where factual situation did not disclose circumstances involving issue of intervening cause, no occasion for court to charge as to it, 126 C 400

where decedent left position of safety while walking on side of road and started across it toward path of approaching automobile, and did not come into position of peril until struck, doctrine of last clear chance has no place in case, 126 C 574

woman struck by engine; court erred in submitting doctrine, 127 C 322

even though defendant's claims of proof lay technical basis for claim of supervening negligence, other of his claims in connection with claims of other party may justify court in refusing to charge as to it, 129 C 10

no error in failing to instruct as to superseding negligence where doctrine not applicable to situation as claimed by plaintiff, on which jury must have based verdict, 129 C 118

where automobile turned left across highway and came to stop at curb and was struck by car coming in opposite direction, court should have charged upon doctrine of last clear chance, 129 C 333

——and should have left to jury crucial question whether defendant had opportunity to avoid collision, 129 C 334

——seriousness of error in not submitting these claims emphasized by fact that at end of charge court told jury that if both parties were negligent neither could recover, 129 C 338

§ 14. ——Assumption of Risk

charge disregarding assumption of risk by servant where it is material, is error, 82 C 271

charge that, if one knew risk was extraordinary, he assumed it, too narrow, 86 C 83

charge on assumption of ordinary risk should include a definition of what constitutes an ordinary or extraordinary risk, 86 C 83

charge that assumption of risk had no application to case of injury to tenant by falling down unlighted stairway correct, 117 C 347

charge with respect to assumption of risk by tenant of condition of unrepaired porch inadequate, 119 C 398

tenant did not assume risk of defects in portions of building not included in lease, 120 C 331

question of assumption of risk by tenant in attempting to use elevator in dark without

turning on lights correctly left to jury as question of fact, 122 C 362
assumption of risk in connection with roller coaster, 126 C 222

§ 15. ——Res Ipsa Loquitur

where res ipsa loquitur doctrine involved it is sufficient to explain elements to jury without specially naming the doctrine, 98 C 628
failure to present res ipsa loquitur harmless where not properly requested and where issue of negligence established by verdict against plaintiff, 108 C 115
res ipsa loquitur not applicable in automobile accident where front tire blown out, 114 C 473
electric light globe fell on plaintiff from standard under defendant's control; *held* charge de res ipsa loquitur erroneous as giving impression that doctrine itself had evidential force and that burden of proof was thereby imposed on defendant, 117 C 631
if reasonable men might disagree as to whether or not conditions upon which application of doctrine of res ipsa loquitur depends were present, it must be submitted to jury, 117 C 635
charge need not make specific reference to doctrine of res ipsa loquitur by name, 121 C 26
——but court should in proper case, if requested, explain the jury's right to draw inference of negligence, 121 C 26
——where plaintiff did not stop with proof of injury by icicle falling from defendant's building but went on with other evidence of negligence, *held* no occasion for charge on doctrine, 121 C 26
in absence of request, and on finding, court not required to charge on supervening negligence and res ipsa loquitur, 121 C 123
when plaintiff offered proof of negligent erection of ladder which fell and injured him and defendant offered countervailing evidence, no occasion to charge on doctrine of res ipsa loquitur, 121 C 361
where plaintiff was struck by bolt which she claimed was hurled by passing train, court in error in placing burden on defendant to explain cause of accident, assuming that doctrine of res ipsa loquitur was applicable, 123 C 81

§ 16. ——Automobiles and Other Vehicles on Highway

§ 16(1). In General; Miscellaneous Cases

as to contributory negligence of one riding on running board of a street car, 81 C 560
correct charge in case of criminal negligence in driving automobile, 82 C 671, 83 C 437, 440
permissible to read automobile act in charge, 82 C 671
under the circumstances it was correct to charge that one has no right to assume that others are not on the highway so as to justify reckless conduct, 82 C 672
charge that motorman, who gives a signal at a proper distance, has right to assume, until contrary appears or should appear, that parties will take heed, good, 87 C 311
charge correct as to duty of a bicyclist on highway, 90 C 702
correct to charge that boy, riding bicycle in highway, should exercise care of boy of his age, 92 C 678
charge that whether driver should look sideways or ahead depends on circumstances *held* pertinent and proper, 93 C 598
truck breaking through a drain under street, 94 C 533
error to charge that it is not motorman's duty to look out for children more carefully than adults, 95 C 520
error to exclude element of young child's judgment, 95 C 520
rule of road should not have been called to jury's attention unless to show plainly that it had no relevancy to situation, 96 C 22
error to charge that, if A's negligence, in any way contributed, he could not recover; only where it naturally and essentially contributes is it material, 96 C 337
no error not to explain a statute that was not basis of action, 96 C 505
after correct charge as to elements of accident, it is error to add later that driver must be incompetent and inexperienced, 96 C 663
use of "visible" instead of "clearly visible" *held* immaterial, 97 C 154
charge that plaintiff must prove driver of defendant's car to have been reckless harmful error, 97 C 474
charge in negligence action that plaintiff can only recover by proving facts he alleges *held* sufficient as against claim of its failure to state defendant's contention that injury was due to other causes than the collision alleged, 97 C 593
charge *held* not to have assumed as a fact plaintiff's version of the accident, 97 C 595
necessity of explaining statutory rules in automobile case, 98 C 490
where plaintiff relies on violation of rules of road error not to explain them and their application, 99 C 723
reference to all offenses in statutes against reckless driving, operating at improper speed and so as to endanger life or property as "reckless driving" could not have misled jury, 102 C 42
that plaintiff, whose intestate was run over, must prove that motorman "actually knew"

there was danger of accident, erroneous, 102 C 677

where statutory regulations of motor vehicles is material court must charge as to them, 106 C 383

charge that driver of automobile must so manage it as not to injure anyone is improper but harmless in view of rest of charge, 106 C 448

error to omit portion of statutory rule of the road which is applicable to the evidence, 106 C 499

charge that proposition is incontrovertibly demonstrated by physical facts improper if any other conclusion possible, 107 C 670

——so that, if collision had occurred in certain manner momentum of automobile would have carried it in certain direction, 107 C 670

charge failing to call attention to one specification of negligence in statute, upheld, 108 C 544

violation of statutory rules of road not actionable unless proximate cause of injury, 109 C 77

unlicensed driver under instruction of licensed driver, 110 C 358

failure to have automobile license, inexperience and immaturity as bearing on negligence, 114 C 336

where accident rendered defendant unconscious plaintiff not entitled to charge that he should know what happened before accident and his not knowing raised a presumption of improper operation, 114 C 473

res ipsa loquitur not applicable in automobile accident where front tire blown out, 114 C 473

reckless driving, 115 C 701

to justify recovery from municipality for death of driver and passenger due to defective fence it must appear that defect was sole proximate cause of injury, 116 C 55

——and charge should include definite statement of rule, 116 C 55

——question of whether city had notice of defect should have been submitted to jury with proper instructions, 116 C 55

driver of firetruck killed by train while crossing tracks on way to fire; duty of railroad; of engineer; last clear chance, 116 C 127

no error in failure to charge as to right of driver of defendant's car to assume that driver of plaintiff's car would obey rules of road, 116 C 471

omission to mention contributory negligence in portion of charge dealing with violation of rule of road not error, when clear charge given elsewhere on this element, 116 C 471

where plaintiff claimed night was foggy, defendant's lights dim, etc., jury should have been instructed it was question of fact whether defendant was negligent in parking on highway, 116 C 569

that if defendant driver was negligent prior to collision he could not nullify this primary negligence by any subsequent act, correct, 116 C 576

charge on concurring negligence not necessary because complaint alleged injuries were "due solely" to negligence of defendant, 117 C 607

charge did not take question of whether certain acts would constitute violation of statute de reckless operation from jury, where court qualified its statement by saying these acts would be violation only if negligent, 117 C 612

——and instruction that certain conduct, if negligent, would be reckless misconduct within statute and that violation of statute would be negligence, was harmless, 117 C 612

where charge stated that negligence through failure to comply with any standard of care imposed by statute must be shown as substantial factor, unnecessary to repeat this qualification as to each statute, 117 C 692

jury were told at length that possession of right of way did not excuse negligent operation; unnecessary to repeat instruction in connection with reading of statute at jury's request, 119 C 310

decedent struck by defendant's car while removing tire from truck which was parked after dark without lights; *held* duty of court to call attention of jury to applicable statute, 120 C 412

court in error in submitting question of breach of statute de parking on traveled portion of highway at curve or turn where clear view cannot be had for 150 feet in each direction, 121 C 432

where violation of statute constitutes negligence per se, court should specifically so instruct, 123 C 31

where three cars were involved in accident and driver of only one was sued, court should have charged, even without request, as to what verdict should be in case jury found concurring negligence, 123 C 142

where no allegation of reckless driving or claim of it in evidence the court, in reading statute, properly omitted portion referring to reckless driving, 123 C 173

plaintiff not harmed by instruction as to emergency, 123 C 205

explicit charge that bus driver's alleged failure to stop and assist after colliding with automobile could not constitute actionable negligence sustained, 123 C 605

——as well as limits within and purposes for which failure to return to wrecked car could be considered, 123 C 605

charge that proof that truck in collision was standing on highway was condition of recovery sustained where complaint so alleged and case was tried on that theory, 124 C 10

where W was charged with negligence and nuisance for loading girders on K's truck so they projected, charge that W would not be liable for nuisance if his act in loading was voluntary rather than as result of contract, erroneous, 126 C 445

——jury should also have been instructed as to effect of concurring negligence of K in operating truck upon liability of W, 126 C 446

on facts jury could not have found reckless misconduct and court did not err in failing to submit this issue, 127 C 79

failure to include statement that a person is charged with knowledge of conditions which he can observe, whether or not he does so, not ground for new trial in absence of specific request and where matter fairly covered in other parts of charge, 127 C 649

admission by one defendant of allegation as to right of way does not remove issue from case with respect to other defendant and court right in submitting it to jury, 129 C 10

charge imposing duty on driver to make "every possible endeavor" and "to do everything possible" to avoid collision placed too high a duty on him, particularly when coming in latter part of charge, 129 C 169

allegations of reckless misconduct *held* to be sufficient to justify court in submitting issue to jury in absence of objection until after verdict, 129 C 302

reference in charge to "unavoidable accident" proper in explanation of requirements as to reasonable care in operation of automobile, 129 C 537

§ 16(2). Speed and Control; Sounding Horn; Skidding

negligence in running street car too fast, 80 C 260

charge stating it is always a difficult thing to prove speed of car *held* proper, 82 C 539

failure to state that proper speed depends on width, traffic, and use of highway is not ground for new trial, 87 C 254

charge is good to the effect that statute did not require one, as a matter of law, to reduce speed and blow horn, but that question was whether under the circumstances he ought to have done so, 93 C 99

correct to say that horn on automobile must be sounded at adequate distance, 95 C 111

speed of car must be associated with other circumstances when presented in charge, 95 C 520

charge when a specific act may be essential to constitute due care as sounding a horn or giving other warning, 97 C 64

harmless error to refer to statute making certain speed prima facie negligence though testimony undisputed that automobile was in limit of speed set by statute, 105 C 690

that jury were at liberty to find speed defendant's car was driven greater than he claimed, by circumstantial evidence, but could not guess that it was going faster, correct, 116 C 389

jury not misled by failure specifically to call attention to presence of decedent at stopping place as element in determining proper speed, where there was general charge as to motorman's duty to use care in view of that fact, 117 C 677

quotation from statute de speed sufficient without reference to other circumstances and conditions, in absence of request, 125 C 445

§ 16(3). Street Intersections

charge that one approaching a well traveled street ought to be unusually careful, not incorrect when read with remainder of charge, 93 C 251

charge as to right of way at intersecting streets upheld, 95 C 695

charge de intersecting streets; statute has important bearing where parties approach at different distances and there is conflicting evidence as to speed, 96 C 16

intersecting streets; charge where a truck forces another from his side to wrong side, latter hitting a third car arriving at approximately same instant, 96 C 505

right of way at intersecting highways, 101 C 439

where in collision of automobiles at street intersection, no claim is made that they did not arrive at approximately same time, there is no need to explain meaning of this phrase in charge, 107 C 709

charge that fails to properly give test for determining right of way but states that if driver on left entered intersection when other was some distance away, former had it, without attaching qualifications de speed, etc., erroneous, 109 C 33

that statutory rule of road at intersection does not apply to cars approaching on same street erroneous, 109 C 484

——and that it applies only when car turning into intersection signals, 109 C 484

duty of driver crossing road from left to right-hand side, 110 C 230

right of way at intersection of public highway with private way, 110 C 358

charge that intersection statute did not apply upheld, 111 C 99

because of size of bus it could not keep to right of center of intersection in turning; charge importing that substantial compli-

ance with statute was sufficient *held* error, 115 C 464
charge de duty of driver to reduce speed and give signal when approaching intersection where there are signs *held* not erroneous, 116 C 48
interpretation of statute de slowing down and giving signal on approaching intersection, 116 C 576
charge that plaintiff's duty was to bring car to full stop at "stop" sign on street intersecting "through" street correct, though sign was few feet away from property line of through street, 116 C 597
——did not violate rule that statutory requirements not subject to exceptions based on judgment of individual as to what is reasonable and practical, 116 C 597
phrase "risk of collision" as it was involved in determining whether plaintiff had right of way, 117 C 522
that fact that plaintiff did not stop at prolongation of nearest property line of "through" street would not affect his right to recover where he did stop at "stop" sign which was short of it, correct, 117 C 548
charge that plaintiff not guilty of contributory negligence by her mere intention to violate statute by passing to left of highway while in intersection, upheld, 117 C 607
appellant could not complain of charge that if, at instant his truck left, the plaintiff's car was about to enter intersection, then latter was guilty of negligence, when this more favorable than request to charge, 117 C 607
where plaintiff did not allege that defendant was negligent in failing to yield right of way in backing out of private driveway, court went as far as necessary in charging that defendant did not have right of way, 117 C 698
violation of statute de passing to right of intersection not negligence per se in Massachusetts as it is here, 118 C 154
——charge of court that plaintiff driver by violating statute was negligent erroneous, 118 C 154
——but as verdict in companion case of infant passenger was also for defendant, this error not harmful, as verdict imputed that defendant was not negligent, 118 C 154
——so also as to charge de location of intersection, 118 C 154
driver swung left in intersection, claiming to have been faced with sudden emergency, and swung onto sidewalk injuring pedestrian; charge sustained, 119 C 63
failure to instruct as to traffic law de yellow light not error where defendant claimed he entered intersection when light was green, 119 C 262
jury should have been told that if driver of unknown car intended to change direction at intersection, statute de giving signal would apply automatically, and if his negligence in not giving it was substantial factor in causing injury to defendant's guest, rather than defendant's reckless disregard, verdict should be for latter, 121 C 506
——effect of charge as given was merely to inform jury there was such a statute, and to leave its application to them, 121 C 506
criterion for determining intersection where highways came together in shape of "Y" with all highway bounds curved, 122 C 203
recovery on basis of application of rules of road de right of way at intersection was within scope of complaint and in plaintiff's claims of proof; failure of court to charge as to it, even in absence of request, error, 123 C 296
where arrangement of light signals at intersection was departure from usual practice contemplated by Legislature, since it fell within statute's broad provisions, court had no choice but to charge upon statute, 125 C 43
charge that if driver's speed at intersection was such that he was powerless to stop, this would be gross negligence and contributory negligence not a defense, erroneous, 125 C 151
charge that if there was place in intersection which distinctly divided it so that it was not practicable to keep to right of center, driver would be entitled to abide by that situation as he found it, erroneous, 125 C 151
if fact that driver passed to left of intersection was undisputed, court should have told jury this was violation of statutory rule and constituted negligence in and of itself, 125 C 151
restriction of discussion to the one intersection which was significant to issues, though there were three intersections at locus, correct, 125 C 553
what determines space within intersection, 125 C 553
where correct determination of point which is intersection of centers of two highways is vital to case, court's failure to state rule or method for locating this point is error, 126 C 478
burden on plaintiff to prove legibility of sign warning of intersecting through way in order to charge driver approaching intersection under statute, 127 C 228
stopping at stop sign when it is obviously not near property line of through way or so located that driver has no vision of through way, 127 C 229

——attempt by court to locate "prolongation of nearest property line" incorrect, 127 C 229

——if such line not within reasonable observation of driver, statute inoperative, 127 C 229

right of way of traveler on highway over one entering it from private driveway; application of statute not restricted to cases where collision is inevitable but applies where there is danger of collision, 127 C 374

omission to charge that in attempting to turn to right at intersection driver had right to assume that other drivers would observe law until he should have seen to contrary erroneous in view of request, 127 C 438

charge de right of way at intersection fatally defective in omitting statement of true test and in stating that first to enter intersection acquired right of way, 127 C 450

——not rendered harmless by further instruction that regardless of who had right of way, each must use reasonable care, 127 C 450

§ 16(4). Meeting; Passing; Overtaking; Stopping; Backing; Turning; Signalling

charging that, if defendant was needlessly on left hand side of the road, he was negligent, upheld, 81 C 492

——also that he should have slackened his speed, 81 C 492

charging, that, if collision occurred by turning directly in front of car, and motorman did all he could to stop, no liability, is good, 82 C 539

error to charge negligence for a driver to turn suddenly from right to left hand side of road, irrespective of the conditions that prompted it, 94 C 127

where plaintiff sues trolley company for injury by its car, contending that he was compelled to drive near track because of negligence of approaching truck driver, 100 C 486

not improper to charge where two automobiles collide in broad daylight that negligence of at least one driver is indicated, 106 C 448

charge failing to refer to right of one crossing in front of trolley to assume motorman would use care, *held* error, 109 C 222

rule of road requiring traveler to keep to right, 111 C 99

where trolley collided with automobile, *held* error to fail to charge as to right of motormen to assume other users of highway would use reasonable care, 112 C 476

——so court should have charged as to effect of emergency, 112 C 476

traveled portion of hard surfaced highway within meaning of rules of road, 114 C 336

plaintiff's car running into defendant's from rear in line of traffic, 114 C 415

where decedent's car was first struck by that of one defendant and then by that of the other, 115 C 352

compliance with statute de giving indication of intention of changing direction; mere act of turning not enough, 115 C 464

that signal by officer to "go" does not authorize driver to proceed regardless of consequences, 116 C 249

statute de giving signal before slackening speed, stopping or backing properly applied to truck on subgrade closed to traffic, 116 C 249

statement that if jury could fix location of truck much of difficulty of case would disappear did not authorize jury to base verdict on this only, disregarding other factors, 117 C 478

court fairly stated that same rules were applicable to defendant in meeting emergency as had previously been stated with reference to plaintiff, 117 C 478

claim of partiality in treatment of parties' claims of proof not justified, 117 C 478

defendant drove to left of road and collided with plaintiff, due to emergency from car ahead crashing into illegally parked car; defendant entitled to a charge de his right to assume others on highway would obey regulations and exercise due care, 117 C 589

——liberal rule of due care in case of emergency, 117 C 589

duty to give signal before stopping; charge that rear stop-light signal must light up before "process of commencing to stop" takes place, not error, 117 C 612

charge that plaintiff, who drew up on right of defendant as they approached intersection where stop-light showed red did not have right of way, upheld, 117 C 619

that mere fact that defendant was operating car on left of center of street would not necessarily be negligence, sustained, 119 C 178

——and that there was no rule of law requiring operation on right between intersections except in cases where travelers proceeding in opposite directions meet, 119 C 178

erroneous to charge that driver is absolutely required to give another one-half of traveled portion of highway, 121 C 432

——particularly in situation where defendant's bus had been standing on highway half a minute before collision, 121 C 432

turning to right so as to give half of traveled portion of highway to person met so that he may pass, "if practicable," 123 C 127

——where car approaching is on operator's side of highway and adjacent bank renders compliance by latter with rule impracticable, charge should not have unqualifiedly placed liability on him if in this emergency he turned to left, 123 C 127

that violation of regulation of public utilities commission as to over-all width of bus by reason of projection of flexible fenders was not actionable negligence, where no evidence that there was contact, fair purport of charge, 123 C 605

charge made sufficiently clear that no liability could be found unless jury first found there was collision, 123 C 605

plaintiff's bumper engaged by that of defendant as latter attempted to pass and plaintiff's car then struck by defendant R coming from opposite direction, 126 C 246

——charge de duty of R sustained, 126 C 247

——question of intervening force and superseding cause squarely presented and court erred in not charging as to it, 126 C 247

——suggestions for proper instructions on subject, 126 C 255

plaintiff's claim of proof that defendant failed to signal turn stricken out, and court's failure to charge that violation of statute de signal to turn was negligence as matter of law was not erroneous, 127 C 289

court correct in submitting as question of fact whether there was such change of direction where truck turned gradually to left then suddenly to right into intersection as to make statute de overtaking and passing inapplicable, 129 C 456

where plaintiff's car stopped at intersection and was run into by defendant's car following, charge de adequacy of signal claimed given by plaintiff adequate, 129 C 536

——charge de effect of "emergency" supported by defendant's claims of proof, 129 C 537

§ 16(5). Lights; Brakes; Equipment

failure to charge regarding chains on automobile, upheld, 83 C 174

charge *held* improper because it did not leave to jury the question whether accident caused by flat wheel, 86 C 82

——also because it charged that switch should have been inspected for ice, 86 C 82

improper brakes; failure to advise jury of standard required by statute and potential effect of such deficiency if it materially contributed to cause collision, prejudicial, 106 C 385

not necessary to charge as to failure of trolley company to equip car with sufficient headlights where there was no evidence of a failure in that regard, 109 C 222

liability of operator of car with defective brakes under statute, 109 C 654

defendant's car rolled out of parking station due to defective brakes injuring plaintiff; duty of defendant; damages, 115 C 469

charge that presumption was that lights of defendant's car were as required by statute, erroneous, 116 C 678

——left open door to finding of negligence and due care which did not arise out of evidence, 116 C 678

no allegation making necessary charge de statute concerning articles attached to motor vehicles, 117 C 174

charge as to duty of driver to provide safe mechanism and to remedy defective condition *held* apt to situation and supported by complaint, 118 C 565

court justified in not charging that no verdict could be rendered against operator who was not owner for driving with defective brakes, 119 C 310

——statute makes such operation knowingly a violation of reckless driving prohibition, 119 C 310

court correct in submitting to jury question of whether defendant's truck was so constructed as to obscure view to rear and hence require equipment with mirror under terms of statute, 119 C 591

——also in submitting question of violation of this statute, which was directly in issue, 119 C 591

court in error in submitting question of breach of statute de red light in rear when smoke or weather conditions render it impossible to see 200 feet, since there was no evidence of such conditions, 121 C 432

statute requiring red light on rear at night imposes liability on operator for failure to have such light, regardless of whether or not such failure was due to his negligence, 122 C 208

statute requiring operator of commercial vehicle so constructed or loaded that he has no unobstructed view to rear to keep constant observation of approach of vehicles from rear by means of mirror, 122 C 208

——meaning of "constant," 122 C 208

——charge criticized as centering attention of jury on circumstance which might affect outlook of driver and minimizing obligation of statute, 122 C 209

when mechanical device to signal stop or change of direction is necessary in place of hand signal, 122 C 209

§ 16(6). Persons on Foot

charge on due care required on alighting from trolley and crossing in front of automobile, upheld, 83 C 174

proper to refuse request that one is entitled to recover if he is walking along the highway with care and is run into from behind and knocked down; it ignores contributory negligence, 85 C 579

charge that only due and ordinary care is required of a street railroad to protect parties alighting is incorrect; highest practicable degree of care is required, 87 C 652

error to charge jury to find whether plaintiff had shown by preponderance of evidence

that decedent was not intoxicated, 93 C 99

charge suggesting that while pedestrians and teams had equal rights in highway, ordinarily teams would keep to highway and pedestrians to sidewalk, was pertinent and helpful, 93 C 597

no error to charge, in regard to boy driving cows on highway, that he should exercise reasonable care; could add great care, 96 C 40

error in charging degree of care required of motorman where children are present in street, 96 C 285

in case of boy under four, no error to charge that he must use such care as a reasonably prudent boy of his age should use under similar circumstances, 96 C 285

charge where automobile, to avoid children, ran up bank and overturned, injuring them, upheld, 98 C 141

charge as to effect of intoxication of plaintiff and duty to use senses to look out for danger, 99 C 633

——so as to duty of pedestrian in or near traveled portion of highway, 99 C 636

duty of motorist toward pedestrian at intersection, 101 C 62

if charge fully presents duty of plaintiff as to care in crossing street, request to charge specifically on statute covering situation need not be granted, 103 C 547

duty of motorman approaching dangerous stopping point; driving at night, 109 C 221

informal charge when automobile struck pedestrian crossing street at night examined and sustained, 111 C 219

duty of bus driver to provide safe place for passenger to alight, 113 C 408

duty of truck driver to pedestrian, 114 C 85

effect of dark clothing upon visibility of pedestrian on background of dark road, 114 C 345

motorman's duty to prospective passenger; right of latter to assume he will stop, 115 C 80

right of pedestrian to walk on street though there is usable sidewalk; care required if he does so; duty of drivers of car to anticipate possible presence of pedestrian on road, 116 C 150

pedestrian walking on portion of way customarily used by vehicles must use greater care than when upon sidewalk; applies to both public and private way, 116 C 389

that jury need not pass on question of whether automobile which injured pedestrian was trespasser on railroad property, correct, 116 C 389

court should have told jury plaintiff was guilty of contributory negligence as matter of law if they accepted defendant's version that former was walking on right of road in line of traffic and suddenly turned to left without warning or looking behind, 117 C 534

operator of street car not required to exercise higher standard of care than that which is reasonable to avoid injury to one waiting to board it at regular stopping place, 117 C 677

——therefore it was of no consequence that court took view that complaint did not allege decedent to be prospective passenger, 117 C 677

care required of pedestrian crossing street, 118 C 210

when defendant claimed plaintiff was lying on trolley rail intoxicated, court should have charged that if they found this so and no explanation as to how he got there, plaintiff was guilty of negligence as matter of law, 118 C 276

——unless there was supervening negligence, or this was not proximate cause of accident, neither of which claims were made, 118 C 276

plaintiff struck crossing street; claims of proof amended to add that defendant should, if properly attentive, have seen him when he entered path of car in time to avoid striking him; charge de supervening negligence then required, 120 C 255

court correct in charging that plaintiff crossing shoulder of road with intention of entering bus which had stopped at edge of concrete was merely traveler, to whom bus driver owed merely duty of reasonable care, 120 C 589

defendant drove car into woman as she was waiting to board trolley; charge sustained, 120 C 687

if there had been violation of rule of public utilities commission which provided that bus, when taking on or discharging passengers, should be stopped at extreme right of available roadway, jury justified in finding operator negligent, 122 C 236

——"available roadway" broader than "traveled portion of highway," and means such part of roadway as is capable of being used, 122 C 236

where intestate struck by automobile while crossing street at night in diagonal direction not at crosswalk it was for jury to determine if negligence contributed to injury and charge of court was appropriate to situation, 123 C 205

where pedestrian started to cross street when car was 300 feet away and driver had unobstructed view afforded by arc light and headlights, error to charge no evidence that driver should have seen him, 123 C 291

pedestrian crossing street run over by automobile; although no requests were made it was duty of court to charge jury on fundamental issue as to whether plaintiff guilty of contributory negligence in the manner in which he crossed street, 123 C 662

——also whether he was on crosswalk within statutory definition or if way was an alley and thus within exception, and differing degrees of care required, 123 C 663

——also instructions appropriate to opposing claims of parties as to plaintiff's course of conduct, 123 C 663

pedestrian killed while crossing street; charge adequate, 123 C 682

duty of pedestrian crossing street, 125 C 335

standard of care of one having defective eyesight, 125 C 335

that "It is not anticipated that pedestrians will cross at places other than regular crosswalks. And, naturally, drivers are not bound to anticipate that they will cross at places other than regular crosswalks," erroneous and prejudicial, 126 C 22

erroneous charge de limited duty of driver to pedestrian at crosswalk, coming at very end of charge, reversible error in spite of what went before, 126 C 22

where driver of bus from which plaintiff alighted and of car which struck her are jointly sued, verdict for latter *held* not to show jury misunderstood the charge as to former's liability, 126 C 127

court not obligated to cover statute making it offense for pedestrian to use highway negligently or recklessly where it charged adequately as to common-law standard of negligence, which is the same, and there is no claim of reckless misconduct, 127 C 156

statute de crossing street against red light does not apply to pedestrian marooned in middle of street after getting off trolley, 127 C 156

§ 16(7). Passengers; Guests

error to state that rule of the road has nothing to do with a case where plaintiff, who was injured in a collision, was not owner or operator of car, 95 C 263

concerning duty of guest in automobile, 105 C 521

duty of passenger entering automobile with drunken driver, 107 C 91

refusal of request to charge in action by guest that there was no question of contributory negligence, not error when charge stated proper rule, 108 C 191

in action by passenger in automobile, proper to charge as to contributory or imputed negligence though defendant does not raise issue, 108 C 544

guest statute; wilful or wanton misconduct; court need only briefly distinguish from negligence, 109 C 428

charge pertinent to negligence irrelevant in action under guest statute, 109 C 517

proper instruction de phrase "caused by his heedlessness or his reckless disregard of the rights of others," 109 C 517

submission of case under guest statute as action for negligence and instruction that plaintiff must prove freedom from contributory negligence *held* erroneous, 109 C 517

charge upheld as correct explanation of essentials for action by guest under statute; intentional misconduct of owner, 110 C 540

where trolley collided with automobile and passenger in automobile sued, request to charge that if driver guilty of negligence trolley company not to be held, properly refused, 112 C 479

collision between car driven by defendant in which plaintiff was passenger and another car; discussion of what would constitute negligence on part of other driver unnecessary, 112 C 682

effect of negligence of driver on guest's right to recover from driver of another car, 115 C 112

contributory negligence no defense in action under guest statute, 115 C 499

plaintiff thrown out of defendant's car by collision after "U" turn; right of way, 115 C 508

"mutual benefit" taking case out of guest statute, 115 C 687

where plaintiff sued bus owner for injuries due to collision between bus in which she was riding and another car, charge that if negligence of driver of latter was sole proximate cause plaintiff could not recover, sustained, 116 C 32

plaintiff being driven by daughter collided with defendant's car; defendant's negligence as sole proximate cause or as cause concurring with daughter's negligence, 116 C 213

concerning liability of negligent driver of car to guest in another car though driver of latter was guilty of concurrent negligence, correct, 116 C 576

court did not charge upon effect of concurrent negligence by K, driver of car in which plaintiff was riding, and defendant driver, but did charge that contributory negligence by K would not bar recovery by plaintiff; charge *held* sufficient, 117 C 170

court told jury that duty of guest in car was very light, etc., *held* failure of court to charge that she was not guilty of contributory negligence as matter of law not reversible error, 117 C 170

gross negligence under Massachusetts law in guest case, 117 C 430

error not to charge in accordance with request that momentary inattention on part of driver, while it might constitute negligence, was not such as to bring case within guest statute, 117 C 513

criticism of charge, that it would lead jury to hold defendant liable for mere negligence, not well taken, 117 C 517

duty of driver of fire truck to volunteer or trespasser thereon whose presence there and intention to leave it were known to driver, 118 C 307

——conduct in driving and starting truck must conform to that of reasonable man under same circumstances, 118 C 307

jury could not have been misled by references to "due care" and "negligence" in view of charge as whole, 118 C 697

court stated rules correctly for guidance of jury in determining whether or not plaintiff was guest, 120 C 1

that one driving defendant's car at his request on fishing trip with defendant was not "guest," correct, 121 C 102

where decedent killed while riding in car driven by wife and defendants did not claim to have proved equal right and authority to control its operation, court correct in disregarding doctrine of joint enterprise, 123 C 50

——defendants not entitled to charge that negligence of wife should be imputed to decedent, 123 C 50

no specific charge upon subject of intoxication as constituting, of itself, reckless misconduct was called for either by pleadings or claims of proof, 123 C 128

decedent on running board of car on front seat of which were three women beside C the driver; charge that negligence of C in breach of statute could not affect right of plaintiff to recover against driver of truck with which there was collision, too favorable to plaintiff, 123 C 353

——position of decedent on running board as mere condition not proximate cause of accident, 123 C 353

charge upon proximate cause as related to contributory negligence adequate in case where man crushed between two trucks, on running board of one of which he was riding; distinction between cause and condition, 129 C 8

§ 16(8). Family Car Doctrine; Operation by Another

if control of a driver is in A, it is correct to charge that he is liable, 95 C 639

where question was whether A had implied authority to borrow automobile it was error to charge that if A had authority it made no difference whether car used was borrowed or owned by defendant, 96 C 21

family-car doctrine, 102 C 66

plaintiff injured in altercation following attempt by defendant P to collect bill for defendant P Company; *held*

——request to charge that assault not within P's employment and had no natural or necessary relation to it, properly refused, 117 C 11

——as on plaintiff's offer of proof that assault was committed while P was attempting to collect bill, this was question of fact for jury, 117 C 11

——also request that jury must be satisfied that authority to collect bill contemplated use of force and that assault was recognized means of collecting debt, properly refused, 117 C 11

where complaint was adequate, a mere inferential objection to a charge under family-car doctrine through request to charge on agency theory was insufficient and came too late, 117 C 539

family-car doctrine; circumstantial evidence as to conduct of parties not to be disregarded though there is direct testimony, 117 C 539

——charge as whole adequate as to necessity of proof of general authority, 117 C 539

statute de presumption that car was family car from relationship of driver and owner properly applied though suit was brought before act became effective, 117 C 539

——and if statute were not applicable, reference to it would have been innocuous in view of court's charge that effect of statute was removed by defendant's testimony that it was not family car, 117 C 539

§ 17. ——Master and Servant

correct to charge that one should keep a tunnel, in which men are working, in reasonably good and safe condition, 83 C 642

not error to ignore fellow servant doctrine and confine the issue to single ground of negligence, 85 C 468

charge that operation of blasting is intrinsically dangerous and that it was for jury to determine whether the means used exposed employee to probable injury, upheld, 86 C 292

error to leave with jury question of fellow servant under facts of this case, 87 C 149

can leave with jury question of whether duty violated was one resting on master or on servant, 87 C 150

charge not susceptible of interpretation that giving wrong signal was itself evidence of servant's incompetence, 88 C 226

charge de express or implied permission to servant to use elevator, 88 C 646

charge incorrect which declared owner responsible for act of independent contractor, 89 C 622

——also because owner was declared to be responsible for acts of servant without showing authority of servant, 89 C 622

must correctly state test to determine whether relation is that of independent contractor or master and servant, 91 C 426

error to charge that railroad crew, operating in defendant's yard, were his servants, 92 C 323

not error to allow jury to determine whether servant acted within scope of employment while driving a truck to his home, 92 C 677

charge that, if master had a number of suitable instrumentalities for servant to choose from, but that if he chose carelessly, he cannot recover, must be qualified to state that he is not required to examine for latent defects, 95 C 424

where plaintiff hired one defendant to carry him and latter hired another in his stead it is error to charge that ratification thereof by plaintiff relieved the first defendant, 95 C 639

correct to leave with jury whether servant was acting within scope of his authority, 95 C 732

relation of landlord and tenant not of master and servant with respect to farm laborer using well, 100 C 737

responsibility of employer for act of servant in repelling trespasser from inside of tent when he was supposed to be outside, 115 C 62

charge that fire association, to which town annually made appropriation, was not municipal corporation and not entitled to immunity, correct, 118 C 307

——association liable for negligence of agents and servants, 118 C 307

——nor was it immune on ground that members were employees of municipality, 118 C 307

charge that verdict must be against husband alone or against husband and wife correct, where evidence not sufficient to warrant verdict against her alone as sole employer or principal of husband, 125 C 258

liability of private person or corporation for acts of special police officers, paid for by it, 125 C 705

——where only facts were that defendant requested police protection and paid for wages and meals of supernumeraries, court should have charged they were not servants of defendants, 125 C 705

§ 18. ——Defective Highways

presumptive or implied notice to city of defect in street, 79 C 379

charge proper in case where city tries to recover from property owner for money paid because of injury due to "obstacle" on sidewalk, 91 C 254

charge in regard to liability of city as to snow and ice, *held* to require too high a standard of duty, 93 C 622

municipal liability for defective highway, 103 C 598

where charge to jury presented essentials of statutory liability for defective highway, *held* no error, though trial court mistook action as for negligence, 104 C 83

municipal liability for ice and snow on sidewalk, 104 C 528

in snow and ice cases against municipality, considerations such as size of problem, expense, etc., are material; but should not be submitted to jury unless there is evidence of them, 105 C 476

court should define meaning of "structural defect" in charter provision as to sidewalks instead of leaving it to jury to find if one exists, 105 C 480

highway defect; charge *held* error because while correct in defining duty of city in general, it failed as sufficient guide to jury in peculiar situation, 108 C 63

——liability of one causing defect under special charter provision, 108 C 63

correct general statement of duty of city as regards case of sidewalks not enough in absence of reference to particular circumstances, 108 C 553

municipal liability for ice and snow on private property adjacent to sidewalk, 109 C 100

statutory liability of city for injuries from defective sidewalk, 109 C 324

duty of city to repair catch basin, 109 C 324

court in charge did not fail to distinguish action against city for highway defect from ordinary one for negligence, 109 C 324

——speaking of default by city as negligence not improper, 109 C 326

sufficiency of statutory notice of injury given city; description of injury, time and place of occurrence, 113 C 145

accident from snow and ice on highway; court should have pointed out considerations applicable to determining what was reasonable care on part of city, 113 C 181

charge as to duty of town in dealing with defect on highways should not be limited to general statement but should point out relevant considerations, 113 C 185

that barriers to walkway under repair need not be insurmountable, in connection with remainder of charge, *held* sound, 113 C 355

limiting recovery to defect in sidewalk stated in notice of accident to city, though another defect is in evidence as corroboration, 113 C 457

where defect claimed was protrusion of water box in sidewalk, charge as to claim of city that this was due to natural causes which could not be remedied in winter, considered, 113 C 457

——if this were so, city might be obligated to protect travelers from danger, 113 C 463

duty of city in respect to defective sidewalk; right of adjoining owner in portions of street not devoted to travel and duty of traveler in crossing them, 116 C 144

request that if jury found dangerous condition in sidewalk had existed for number of months they could find it had been there long enough for city to remedy it, properly refused, 116 C 144

——request did not contain safeguards which law grants municipality, 116 C 144

mere failure of court to characterize case as one under statute de injuries from sidewalks, rather than of common-law negligence, no ground for reversal, 116 C 565

stating city not insurer of streets, and duty was to exercise reasonable care and that it "meant reasonable care in view of the burden which rests upon a city" *held* insufficient, 116 C 565

charge failing to point out that sidewalk is not to be considered defective unless it is found not to have been in reasonably safe condition *held* insufficient, 116 C 565

charge properly defining a defect in the sidewalk necessary for guidance of jury, 116 C 565

charge as to plaintiff who slipped on ice that "it was her duty to use her eyes, her judgment, all of her senses, to save herself from harm," *held* imposed duty in excess of legal requirement, 118 C 334

——as did charge concerning what she was bound to know of weather conditions, etc., 118 C 334

that there could be no recovery from city if natural cause (storm) combined with defect caused injury, erroneous, 119 C 166

——did not distinguish between where defect concurs with accident or natural cause, 119 C 166

charge of court that if decedent's truck ran off highway across sidewalk into fence as result of skidding on wet pavement, plaintiff could not recover even though decedent not negligent, erroneous, 119 C 476

——for jury to say, under all circumstances, whether such skidding was natural incident in use of highway, possibility of which municipal authorities should have guarded against, 119 C 476

plaintiff injured from stepping on rolling stones on sidewalks; error in court's failure to charge that city was entitled to benefit of whatever was done by abutting owners to keep walk safe, 121 C 331

——and this was reversible error though defendant did not raise point at trial, 121 C 331

court should have charged that city's duty was confined to action within highway limits; not liable for stones thrown or washed thereon from adjoining land, 121 C 331

court's charge that plaintiff claimed defect consisted of collection of stones on walk in a depression or hole, was wrongful assumption and harmful, 121 C 331

right to damages for defect in highway is only that given by statute and in action founded on statute contributory negligence is defense, 122 C 500

——court in error in charging that there might be recovery based on existence of nuisance, regardless of contributory negligence, 122 C 500

in absence of request, and upon finding, court did not err in failing to charge that if portion of street was not open to public travel, city was under no duty to keep it in repair, 122 C 504

to entitle plaintiff to recover for fall due to defect in highway, defect must have been sole proximate cause; no recovery if his negligence or that of third party contributed, 122 C 505

——but where negligence of third party was not in case and when court charged as to contributory negligence, charge was sufficient, 122 C 501

charge on question of negligence was in proper co-ordination with and subordination to main rule as to statutory liability, 122 C 506

court did not err in failing to specifically charge that erection of signs on highway notifying travelers that it was under repair was not defense in itself where it made clear that this was but one fact bearing on plaintiff's knowledge of danger, 123 C 657

fall upon icy sidewalk, 125 C 566

complaint and claims of proof did not support claim that court should have stated law applicable to concurrence of natural cause with structural defect in ice and snow case, 126 C 484

charge insufficient in sidewalk defect case which did not define constructive notice clearly and explain nature and extent of defendant's duty of inspection, 128 C 465

——nor did it afford jury any guide as to circumstances to consider, such as extent of city's problem and nature of defect, 128 C 465

where truck went through fence on city street over bridge, after skidding on icy trolley rails, court's charge that there could be no recovery against city unless breach of its duty was sole cause of accident could not be complained of by city, 129 C 693

——not bound to charge as to common-law duty on part of railway company to maintain rails, as breach of duty which was statutory only was alleged, 129 C 694

charge that, if city failed to maintain sufficient fence, fact that city or railway company failed to keep highway safe would not prevent finding that want of fence was sole proximate cause of accident, sustained, 129 C 694

charge that mischances of highway traffic which municipality should guard against in determining safety of fence may include those due to negligence of others, except that of driver, sustained, 129 C 694

——could have referred only to breach of duty of railway company, and did not impose heavier duty on city than it was bound to bear, 129 C 694

——but whether as a general principle charge was correct, quaere, 129 C 699

§ 19. ——Landlord and Tenant; Invitation and License

where an agreement calls for repairs upon notice, charge that one is liable if he has only actual knowledge of need of repairs, *held* improper, 86 C 8

relation of landlord and tenant not of master and servant with respect to farm laborer using well, 100 C 737

duty of landowner to trespasser, 101 C 342

duty of landlord as to premises over which he retains control, 103 C 267, 647

duty of owner of premises to invitee, 103 C 520

duty of contractor in making alterations on premises under license from owner, 104 C 54

duty of proprietor of public amusement resort to patrons, 110 C 593

liability of landlord for failing to light cellar at night, 111 C 22

within province of court to charge as to whether person in store is there as licensee or invitee, 113 C 394

duty of landlord to inspect premises for defects, 114 C 447

duty toward trespasser entering circus tent, 115 C 62

duty of bathing beach proprietor to invitees; liability for injuries beyond low-water mark, 115 C 92

duty of landlord under statute to provide lighting in public hall of tenement; reasonable care and diligence properly submitted as question of fact, 115 C 233

charge eliminating condition of platform on stairway or steps below one on which plaintiff slipped as proximate cause of fall correct, 115 C 233

whether plaintiff fell on walk within or without street line as bearing on landlord's liability in count alleging negligence and count alleging nuisance, 116 C 102

driver of firetruck killed by train while crossing tracks on way to fire; request de standard of care of one going on premises of another to save life or property not applicable, 116 C 127

where complaint charged railroad with negligence in not keeping station approach reasonably safe and alleged plaintiff was prospective passenger, which defendant denied, court should charge as to duty both to trespasser and invitee, 116 C 389

——error harmless where jury found contributory negligence, 116 C 389

common right of yard in back of building as evidence that it was "tenement" within statute; use of yard, its size, or means of access immaterial, 117 C 347

standard of care required of owner of store operating escalator not that of common carrier; what is, 117 C 522

where verandah collapsed by reason of rotted beams and post under it, court in error in removing question of control from jury, where plaintiffs offered evidence that landlord retained control, 118 C 573

tenant fell on common stairway due to slipping on mat on tread; charge as to "absolute" nuisance; nuisance founded on negligence; contributory negligence of tenant; latter must have comprehended danger, 118 C 681

charge with respect to assumption of risk by tenant of condition of unrepaired porch inadequate, 119 C 398

liability of joint owners of right of way to one injured in using it in going to parking station, 119 C 443

where plaintiff was injured by falling in unlighted cellar passage, court was in error in instructing jury that landlord had no duty to furnish additional light than was there when tenant hired apartment, 120 C 331

court correct in charging jury that there was statutory duty on tenement house owner to light steps leading to house and entirely outside it, 121 C 258

in absence of request for a more specific statement of duty resting on defendant as landlord of plaintiff, charge stating correct principles of negligence sufficient, 122 C 362

——unnecessary to charge as to necessity of notice to landlord of dangerous condition since that condition was created by own agent, 122 C 362

duty of landowner to invitee, licensee, trespasser, 123 C 110

——duty to disclose to children risk of dangerous condition on premises, 123 C 111

plaintiff injured falling over hose reel while walking from garage leased from defendant;

distinction between duty owed to licensee and invitee, 125 C 177

——duty of landowner to safeguard or warn licensee of danger he has created in particular portion of premises which he knows licensee customarily crosses, 125 C 177

comment of court placing emphasis on reasonable safety of step at time of plaintiff's fall rather than cost to defendant of eliminating it, where evidence of latter permitted, not error, 125 C 670

in suit against owner of building who leased store in it, illustration by court of its duty de entrances to store comparing it with that of store owner, inapt but not harmful, 125 C 670

distinction drawn by court between "safe" and "reasonably safe" to make clear defendant's duty not that of insurer, correct, 125 C 670

use of words bound "to keep" entrance reasonably safe, used interchangeably with "to have," not error, though defect was structural as distinguished from temporary, 125 C 670

omitting to explain what it meant by "like circumstances," in absence of request, not error, 125 C 671

refusal to charge de responsibility of owner who relies on claimed fault of contractor as defense, where neither pleadings nor claims raised issue and it was undisputed that defendant had control, correct, 125 C 674

fall on floor of store; court should have charged that vital specific question of fact was whether floor was wet and slippery, 127 C 422

charge fixing basis of liability of landlord to tenant for injuries caused by condition of premises which landlord had agreed to repair, 128 C 493

charge as to burden of proof, proximate cause and contributory negligence in "swinging door case" found correct in law, adapted to the issues and sufficient for the guidance of the jury, 129 C 160

where plaintiff's fall from porch was caused by combination of lack of handrail and nudge given him by defendant, charge sustained, 129 C 317

——charge on assumption of risk not required as plaintiff could not anticipate combination of factors which caused his injury, 129 C 320

court erroneously applied statute de fire escapes to third floor building which was only applicable to buildings of more than three stories, 129 C 404

§ 20. ——Physicians and Surgeons

malpractice; necessity for expert testimony; presumptions, 111 C 482

charge that result of operation was not as favorable as hoped for raises no presumption of want of proper care, correct, 113 C 484

malpractice case; presumption that physician discharged duty; burden and preponderance of proof, 113 C 484

that physician must exercise such a degree of care as to enable him in all cases to effect cure, properly refused, 113 C 484

that consent to undergo operation to remove tumor did not authorize lesser operation, where former proved too hazardous, properly refused, 113 C 484

test of care, skill and diligence of physician; different schools of practice; same general neighborhood and same general lines of practice, 115 C 563

malpractice action for removing two sound teeth instead of two abscessed teeth, 119 C 390

——court's emphasis on extraction of sound teeth rather than failure to remove abscessed teeth not error in view of charge as whole, 119 C 390

——court's remarks, in setting out defendant's claims, that plaintiff pointed out teeth to be extracted, not erroneous, 119 C 395

court justified in submitting case on issue of negligence and disregarding wilful and wanton misconduct, in view of evidence, 121 C 324

——and court correct in charging that if jury believed no complaints had been made by plaintiff, requiring immediate investigation by defendant, that was end of case, 121 C 324

charge made it abundantly clear that obstetrician would be absolved from bona fide error in judgment only if he exercised care and skill required in field of obstetrics, 121 C 324

charge in malpractice case that "the wrongful act or negligence must have been a substantial contributory factor in producing the injuries complained of," sustained, 122 C 137

——plaintiff's contention that rule should be modified in malpractice cases overruled, 122 C 137

——"contributing" properly used to distinguish negligence which transcends the minor or trivial, 122 C 142

§ 21. ——Carriers

erroneous to charge that defendant was negligent in not providing cars enough to accommodate plaintiff when such negligence is not alleged and it does not appear that there were not other cars which he might reasonably have taken, 85 C 641

charge *held* not adequate as to relation of carrier and passenger, 90 C 74

need not distinguish between liability of a public or private carrier as whichever the defendant was, he was obliged to use reasonable care in handling a glass shipment, 92 C 604

duty of street railway company toward passenger, 103 C 678

standard of care required of motorman toward passengers; duty to warn passenger on running board of possible dangers; question of fact, 113 C 556

plaintiff injured when thrown to floor of trolley as he was changing seat, when it came to sudden stop in effort to avoid collision with automobile on track, 121 C 511

——charge as to proper care of motorman sustained, 121 C 511

——no error in not culling statement out of long and complicated request, 121 C 511

——though defendant did not claim contributory negligence, submission of this issue not reversible error, 121 C 511

——charge that negligence of driver of automobile would not excuse defendant if motorman was negligent, correct, 121 C 511

of bus driver as common carrier, 122 C 380

where reasonable inference from evidence was that taxi driver accepted and solicited passengers indiscriminately, court should have charged as to liability on basis of common carrier, 124 C 549

——charge that passenger entitled to recover if negligence of driver was substantial factor, even if there was no negligence on part of driver of other vehicle involved, correct, 124 C 549

characterization of duty of motorman as "highest degree of care and skill" without qualification as to his right to assume that no automobile would overtake and swing onto track immediately ahead of trolley, reversible error, 129 C 554

duty of motorman confronted with sudden emergency to exercise highest degree of care reasonably to be expected of person carrying persons for hire when confronted with emergency, 129 C 554

§ 22. ——Miscellaneous Particular Cases

charge exonerating one defendant if certain facts are found against another, upheld, 81 C 556

unnecessary to charge as to effect of failure to investigate the character of a horse, if such act does not appear to be necessary, 82 C 200

error to charge that plaintiff could recover if not careless, but was injured by independent act of defendant's servant since this ignores other elements of liability, 82 C 258

correct to tell jury that conduct of deceased should be judged by situation as it appeared to him at the time, 82 C 671

a charge that two plaintiffs cannot recover separately without proof of defendant's negligence complies with a request that one could not recover if injury is sole result of other's negligence, 83 C 219

if owner of horse knows it kicks, he is bound to use ordinary care when he puts it where it might injure people, 84 C 249

correct to charge that there must be some identification of a horse which injured plaintiff, 86 C 302

charge that jury were to find whether engineer used ordinary care in keeping water in the boiler at proper level, good, 86 C 335

——charge upheld against criticism that it instructed jury that explosion was caused by him and that they must assume that the engine was all right when it left the roundhouse, 86 C 335

it is correct to state that if elevator was furnished for plaintiff's use, he must be instructed as to its use and warned of its dangers, 88 C 643

question of violation of a city ordinance may be withdrawn from jury if it did not directly contribute to the injury, 88 C 701

charge not open to the objection that it permitted actionable negligence to be imputed from the mere fact that there was an explosion, 89 C 117

error was committed in removing from jury important facts in connection with contributory negligence, 89 C 622

charge in case of injury from explosion of shotgun *held* sufficient, 90 C 497

correct charge as to liability of painter for defective work, 93 C 381

under the charge *held* that the jury could not have failed to understand that the only ground of negligence charged was the operation of railroad gates, not their maintenance, 93 C 439

charge need not specifically state that young children do not ordinarily appreciate danger, 93 C 597

correct as to matter of lateral support of adjoining property, 94 C 167

charge as to duty of "protection" against threatened danger on part of one causing it, considered, 94 C 188

charge de proximate cause and contributory negligence upheld, 95 C 231

in master and servant case, charge is inadequate that, if servant had chance to examine instrument and failed to do so, he could not recover, 95 C 424

charge as to test of reasonable care in making fast a barge, 95 C 486

charge *held* to comply with law as to eavesdrip except in minor particulars, 96 C 686

inadvertent reference stating standard of care to be that of man of plaintiff's "class and condition" harmless, 98 C 609

charge of court *held* not to eliminate negligence of third party from the case; defendant might show negligence of third party, though not claimed by plaintiff, 99 C 12

charge *held* to mean merely that the greater the danger, the greater the care to be used, 99 C 682

duties of selectmen as fence viewers, 101 C 280

one told by watchman to leave certain building at night not entitled to charge that he was entitled to assume that there was no hidden danger because it presupposes existence of such a danger, 101 C 341

——but entitled to charge that he could assume he might pass out in safety if he used due care, 101 C 341

where case rested on common-law negligence in maintaining barbed wire fence, it was error to read statutes to jury forbidding its maintenance as indicating its dangerous nature, 101 C 545

duty of contractor making highway repairs, 102 C 162

duty of railroad at grade crossings, 102 C 735

payment of workmen's compensation; effect of, in action for negligence of third party, 102 C 735

trial court in enumerating allegations of negligence *held* not to have omitted one of them, 105 C 49

if jury warned to disregard intimation in questions that defendant is insured, failure to refer to matter in charge not error, at least in absence of request, 107 C 156

use of terms "wanton, wilful or careless conduct" in charge as to injury due to use of inherently dangerous article inadequate without further explanation, 107 C 568

use of words "careful" and "careless" in negligence case improper unless qualified, 108 C 95

trial court's characterization of ten-year-old child as "immature" *held* not harmful; care required, 108 C 484

no error in refusal to state what would be negligence in adult and to leave to jury determination whether boy was guilty of same negligence, 109 C 87

comment in charge that little care was to be expected of five-year-old boy and that jury would probably have little difficulty with this issue, upheld, 109 C 87

where both plaintiff and defendant claim damages from other, little need to dwell on issue of contributory negligence, 110 C 687

untechnical charge as to recovery for suffering and injury caused by negligence, upheld, 113 C 145

use of dynamite; when there is liability regardless of negligence or contributory negligence; question of fact for jury, 113 C 674

injury from explosives sold plaintiff minor by defendant; dangerous instrumentality, 114 C 56

duty of sheriff in carrying out execution of ejectment, 114 C 432

defendant who had had drinks rendered unconscious by accident; failure to remember, 114 C 473

use of phrase in charge "an ordinary reasonable and prudent person" instead of "a reasonably prudent person" of no consequence, 115 C 356

where charge was that defendant was not liable unless his negligence was substantial factor in bringing about accident either as sole or proximate cause, failure specifically to refer to effect of concurring negligence of another not ground for retrial, 116 C 213

charge failed sufficiently to explain issue of contributory negligence, 116 C 565

where court instructed as to different theories on which two defendants were sued, one for heedless disregard and the other for negligence, particular expression "negligence of defendants" could not have misled jury, 116 C 569

instruction permitting finding of negligence or due care on plaintiff's part on facts not arising out of evidence in case *held* harmful, 116 C 682

plaintiff injured by premature explosion of dynamite by alleged defective fuse; "imminently dangerous" instrumentality under law of Tennessee, 117 C 117

failure to charge that degree of care required of decedent was "care and conduct to be expected from a man eighty-one years of age" not erroneous, 118 C 210

submission of issue of contributory negligence to jury when court might properly have charged on it as matter of law not deemed harmful error, 118 C 471

duty of private sanatorium toward patient with suicidal tendencies; notice of condition, 118 C 617

in presenting form of verdict for defendant on complaint and plaintiff on counterclaim, court charged it should be used if both were negligent; *held* not error to fail to instruct it should be used if neither were negligent in view of claims, main charge, and no request to charge, 119 C 262

charge on proximate cause correct; if defendant desired charge on particular feature of case he should have asked for it, 119 C 277

where jury were told that in no event could plaintiff recover if negligent, defendant could not complain because they were not also told that plaintiff could not recover if his negligence concurred with defendant's, 119 C 310

standard of care required of child, 120 C 46
——fixing standard as that care which reasonably prudent boy of same age would exercise under circumstances, not erroneous as setting up an "objective and external," rather than a "subjective and internal" standard, 120 C 46
——but deficient in making age only the criterion, since experience and judgment were other elements, 120 C 46
——approved standard is such care as child of "similar age, judgment and experience" would have exercised, 120 C 46
——but whether deficiency was harmful error not considered as it was not made ground of appeal, 120 C 46
portion of charge de contributory negligence of plaintiff, who knew of tendency of elevator to slip in backing into it, sustained in view of other portions of charge, 120 C 114
failure to make specific reference to duty of defendant to exercise reasonable care as applied to particular circumstances, not error in absence of request, 120 C 688
court correct in stating that what might be negligence on part of others under different circumstances might not be negligence on part of firemen, 121 C 361
it would have been error to charge that plaintiff's knowledge of defective condition in elevator shaft into which he stepped believing carriage was there would constitute contributory negligence, 122 C 253
——court correctly charged that it was plaintiff's duty to act as reasonably prudent person with same amount of knowledge would have acted, 122 C 253
rule measuring conduct of children by what is to be expected of children of similar age, judgment and experience, not applicable to negligence arising from violation of statute, 122 C 447
——so plaintiff, a boy of ten, not entitled to this charge when he violated intersection statute, 122 C 447
duty of officer of Hartford Retreat to disclose to inmate who was voluntarily committed, method by which he could secure release, 124 C 170
negligence and nuisance in action for injuries from explosives, 124 C 367
injury by cow; where litigated issue was which of two defendants had ownership and control, court should have left this to jury, 124 C 695
——charge also erroneous in proceeding in part on theory that statute applied, since plaintiff was not owner of the land, 124 C 695
——and in importing issue of "dangerous or vicious cow," 124 C 695
act of God, 125 C 76
impounding flood waters and letting them escape in excessive flow, 125 C 76
rights of plaintiff as lower riparian owner, 125 C 76
contributory negligence of plaintiff whose foot was injured by falling of stone while excavating cellar, 125 C 258
duty of plaintiff if she knew danger to herself from her peculiar bone condition which made her susceptible to fracture, 126 C 222
where plaintiff held itself out as skilled engineer, jury should have been instructed that it was bound to exercise that degree of care which skilled engineer of ordinary prudence would exercise under circumstances, 126 C 551
——where this instruction given on one occasion but elsewhere in charge care required was referred to as care of reasonably prudent man, error, 126 C 551
charge that plaintiff might recover upon ground of defendant's negligence in using defective rim in mounting tire erroneous, where this issue not raised by pleadings and contrary to claims of proof of plaintiff, 126 C 635
——that defendant claimed to have proved that cause of action was defective rim, though proper matter of defense, could not serve to enlarge plaintiff's cause of action, 126 C 635
if plaintiff rendered unconscious by being struck by train and remained so on tracks until struck by second train going in other direction, any negligence of his which contributed to first accident would not debar him from recovery for second, 127 C 86
——charge that if plaintiff was guilty of contributory negligence this "would extend right through and bar a recovery," erroneous, 127 C 86
effect of failure of court to charge that defendant hospital was charitable institution, 127 C 194
duty to sound bell or whistle at highway grade crossings not applicable where accident was at path over tracks, 127 C 322
under circumstances, assembled tire and rim, explosion of which injured plaintiff, could not constitute public or private nuisance and court correctly treated case as one involving negligence only, 128 C 110
unnecessary to instruct jury specifically that defendant's liability not affected by whether he was acting as volunteer or under contractual obligation in loading truck, in view of rest of charge and absence of request, 128 C 280
where defendant did not claim contributory negligence, charge that it is no defense to absolute nuisance not required, 128 C 283

where power company claimed man trimming tree slipped and grabbed high tension wire, error to charge that if injury resulted from accident there could be no recovery as matter of law, 129 C 607

——error emphasized in various places and burden placed on plaintiff to prove slipping not accidental; error was harmful, 129 C 607

§ 23. Nuisance

cause of action involving negligence and nuisance; two-fold aspect to be covered in charge, 98 C 523

charge as to what constitutes a nuisance, sustained, 115 C 107

defendant drove into rope stretched across highway and held by plaintiff, injuring him; rope conceded to be nuisance; court charged plaintiff could recover only if defendant's fault so extreme as to amount to indifference to consequences, *held* that court erred in not presenting question whether defendant saw or should have seen danger and in absolving her from duty to use reasonable care, 117 C 359

court did not err in not charging that doctrine of "attractive nuisance" was not law of this State, where pile of lumber did not present condition likely to attract children and no claim was made involving doctrine, 123 C 110

if natural tendency of act complained of was to create danger and inflict injury upon person or property it might properly be found nuisance as matter of fact; lumber improperly piled, 123 C 111

charge that count alleged nuisance, either absolute or based on negligence, and later that plaintiff must prove "all the material allegations" not error; jury not misled into thinking burden on plaintiff to prove both absolute nuisance and one based on negligence, 123 C 657

negligence and nuisance in action for injuries from explosives, 124 C 367

liability of telegraph company having right of way for its poles on land of railroad company to trespass thereon, determined by same principles as that of railroad, 125 C 526

——neither could be held liable for death of child on ground of nuisance, 125 C 527

where case tried on theory of nuisance, court's determination that condition of entrance was not absolute nuisance was correct and charge that it would be one founded on negligence and contributory negligence would bar recovery, correct, 125 C 671

——and that contributory negligence would bar recovery no matter how unsafe may have been conditions at entrance while erroneous as abstract proposition, was not prejudicial upon facts, 125 C 671

where W was charged with negligence and nuisance for loading girders on K's truck so they projected, charge that W would not be liable for nuisance if his act in loading was voluntary rather than as result of contract, erroneous, 126 C 445

——jury should also have been instructed as to effect of concurring negligence of K in operating truck upon liability of W, 126 C 446

after removing negligence count on ground of governmental immunity, court erred in later charging that violation of duty by city's employee might be ground for recovery if substantial factor in causing injury, 129 C 356

——whether or not origin of condition was negligence, determining element in recovery for nuisance is whether natural tendency of condition was to cause injury, 129 C 356

how court should charge with reference to absolute nuisance, nuisance arising out of negligence and contributory negligence as a defense, 129 C 360

state highway employees injured by shock from high tension wires while trimming trees; no private or public nuisance involved, 129 C 606

§ 24. Agency; Brokers; Independent Contractor

agency of person whose use of candle to fill oil tank caused fire, 74 C 425

should distinguish between evidence of existence of agency and evidence of acts of alleged agent, 79 C 251

no error in charge as to law of independent contractors, 82 C 519

error to say broker can recover upon proof that his services were availed of and terms agreed upon; must charge an expressed or implied contract, 82 C 547

charge that, if independent contractor did not use the care that defendant could expect, defendant was not liable, is good, 86 C 292

neglect to define difference between independent contractor and servant or agent, *held* not error, 86 C 292

in case of broker's commission, court cannot charge that no commission was to be paid unless sold for more than stated sum, without charging further that defendant must give plaintiff, after purchaser is found, a fair opportunity to sell to him for more than that sum, 91 C 249

correct charge as to what one must do to earn a commission, 91 C 249

allusion to vendor as vendee's agent not error when vendor is defending for vendee, 91 C 316

in independent contractor case, use of owner's tools does not determine the relation, 91 C 426

——the determinative feature is right to control methods of work, 91 C 426

where case turns on whether relationship is one of independent contractor or master and servant, adequate charge on this is necessary, 91 C 426

no error to charge that if one was in fact employed as a broker, jury could consider him a broker, 96 C 303

charge de employment of plaintiff to sell real estate upheld, 97 C 496

real estate commission; charge inadequate unless it explains elements of procuring cause and sums up facts, 106 C 205

strong condemnation of broker's acting for both parties *held* erroneous where it appeared that both knew of this, 107 C 242

where defendant is held for negligence of one as his agent, jury should be instructed first to determine issue of agency, and that, if found for defendant, no need to regard issues of negligence, 109 C 465

commission of real-estate broker, 111 C 141, 493

authority of agent limited to purchase orders in writing; knowledge of limitation by plaintiff, 113 C 223

suit by margin customer against broker for failure to sell certain stocks and wrongfully selling others; special agreement of leniency; damages, 113 C 366

real-estate commission; court's statement to jury that there was no evidence to support plaintiff's case *held* error, 113 C 545

two separate grounds of recovery of commission for sale of real estate; ending of contract of agency by owner contracting to sell to another, 113 C 545

independent contractor; definition too sharply limited; test is general control, 113 C 674

plaintiff injured in altercation following attempt by defendant P to collect bill for defendant P Co.; question of agency submitted to jury in exceptionally clear and lucid manner, 117 C 14

upon assumption that driver of car was wife of owner, court correctly charged that jury must find she was his agent, and he was responsible equally with her for her conduct, 117 C 97

general principles as to agency correctly stated, but explicit statements applying them erroneous; but in view of general verdict error not reversible, 121 C 320

——so also charge that agent's act could not bind principal if done in disobedience to its orders, 121 C 320

real-estate broker's commission; court should have charged as to when principal is permitted to withdraw offer, 126 C 162

§ 25. Contracts; Sales

new trial must be granted if charge was such as to allow jury to misconstrue contract, 51 C 507

refusal of court to charge that, under allegation of sale to principal, sale to agent cannot be made basis of recovery waived, if no objection made to introduction of evidence of such sale, 66 C 155

charge which made case turn on existence of tenancy from month to month under statute, where special agreement fixed termination of occupancy, *held* erroneous, 67 C 576

where contract for sale of goods is silent as to time of delivery, judge should charge as to reasonable time, 73 C 660

a charge is proper that leaves with jury to determine what is a reasonable time, 81 C 343

where counterclaim is based on defects in goods sold, charge which permits recovery for overpayments is erroneous, 81 C 479

charge that if jury find an agreement to sell goods on part of plaintiff, but none to accept them on part of defendant, verdict should be for defendant is proper and should be given on request, 81 C 479

in contract, parties *held* entitled to full instructions as to acceptance, 81 C 486

explaining rights of a bona fide holder of a bill of exchange, 82 C 26

statement of judge that contract was rescinded after goods reached destination *held* proper on the evidence, 83 C 65

request to instruct that a payment did not affect contractual relations is rightfully refused, if circumstances attending payment did not appear, 85 C 180

charge that, unless services were performed and payments made at the request of defendant, it would not be liable, fairly presents case, 85 C 512

correct to charge that any sum of money or article of value received in satisfaction of an injury makes receipt binding, 85 C 579

charge that inadequacy of consideration of settlement is a proper matter for the jury, is wrong as amount is of no consequence where damages are unliquidated, 85 C 579

charge *held* proper that it was plaintiff's duty to give notice of his claim for extra work, and that if he delayed unreasonably, he could only recover for such extras as he furnished after notice, 85 C 586

correct charge as to delivery, acceptance, and receipt in sales, 86 C 22

charge that an agreement to employ only union men was not unlawful unless it deprived nonunion man of a livelihood, is improper because it ignores the legality of the means employed, 86 C 641

no error to charge as to right to rescind contract if complaint is obscure on this point and there is no request on the subject, 91 C 185
charge that "first class running condition" meant that car would run under ordinary circumstances, *held* good, 91 C 185
to recover money paid on rescission of a contract, no need of charging de breach of a warranty, 91 C 186
charge which removed from jury the question as to whether it was the intention of parties that a memorandum should constitute a lease, *held* incorrect, 92 C 226
where bills of lading were drawn to defendant's order, indorsed by defendant in blank, and forwarded by mail with sight draft, error to charge risk during transportation on defendant seller, 92 C 420
where one warrants a preparation, error to charge as to the need of his knowledge or lack of knowledge of its injurious qualities, 92 C 599
correct to state substance of pleading and of written orders and acceptance of goods, 93 C 670
statement that contract "whatever it was" was completed by letters of a certain date is correct, 93 C 670
statement that jury should take into account experience or lack of it in respective parties is erroneous, 93 C 670
sale of aluminum rods; instructions *held* foreign to the issue and therefore erroneous, 93 C 670
error to charge that acceptance of grapes after inspection is proof of their fitness as warranted, 95 C 529
charge good in case of services given by farmer's wife, 97 C 178
charge de employment of physician *held* inadequate, 97 C 508
in action on guaranty no need to charge as to consideration if this issue not raised, 98 C 78
——nor as to mistake where only issue was as to fraudulent representations, 98 C 78
——nor as to limitation of guaranty to future debts where on trial no distinction made between past and future, 98 C 78
alleged sale of farm tractor; charge of court *held* correct, appropriate, and sufficient, 99 C 149
charge *held* to have fully met all requirements of the law of Texas as to retention of possession by vendor, 99 C 588
where construction of contract depends on disputed circumstances court may submit case in various aspects stating construction of contract as facts are found one way or another, 100 C 581
a charge upon substantial performance should adequately explain the term, 103 C 553
error to submit to jury questions relating to construction of contract, 104 C 23
where promise to pay barred debt was conditional, general charge failing to call jury's attention to this fact is error, 104 C 312
construction of contract always for court, not jury; where facts in dispute jury only finds them specially, or under proper instructions, 104 C 645
rights, duties and remedies of buyer with respect to late or defective deliveries, 104 C 674
where consideration for note is illegal, such as sale of illegal saloon business, 104 C 703
where in contract action no question raised as to meeting of minds, trial court need not charge as to it, though it was a possible claim on facts, 108 C 132
accord and satisfaction, 109 C 244
charge making question of implied contract turn on intent of recipient of services *held* erroneous, 109 C 507
——test is whether she knew or should have known that claimant expected payment, 109 C 507
——where facts reasonably indicate lack of intention to compensate, no occasion to refer to presumption, 109 C 507
——if there is doubt as to this, charge necessary but use of word presumption to be avoided, 109 C 507
presentment of negotiable note where maker absent; presentment excused, 111 C 261
charge as to guaranty of bills for goods bought, 111 C 323
as to whether promise was to answer for debt, default or miscarriage of another and was within Statute of Frauds, 112 C 385
effect of acceptance by buyer of shipment of goods of less than quantity ordered, 112 C 385
defendant claimed prejudice because court did not give jury separate instructions appropriate to tort for breach of duty and to breach of contract for failure to procure effective burglary insurance, 118 C 554
——but complaint was specially adapted to latter, as were evidence and claims of proof, and cause was submitted to jury on latter theory only, 118 C 554
——and court charged if jury found plaintiff neglected duty in his failure to inform himself of contents of policy including statements as to prior burglary he could not recover, 118 C 554
——effect so accorded negligence of plaintiff all that could accrue in action founded on tort and defendant not prejudiced, 118 C 554
where verdict imported agent knew of prior burglary invalidating policy, court correct in leaving to jury whether plaintiff was

chargeable with such want of diligence in failing to read policy as to charge him with knowledge, 118 C 554

failure to charge that plaintiff must prove that he could have secured a burglary policy, notwithstanding the previous burglary, not error, 118 C 554

suit upon guaranty by defendant of agreement of automobile dealer with finance company which purchased notes, 119 C 348

——guaranty covered sales before it was made which were subsequent to agreement on which guaranty was based and not in default when it was made, 119 C 348

——though guaranty executed after three transactions had taken place, it was entire and continuing guaranty, not divisible as to transactions separately, and there was consideration for guaranty as whole, 119 C 348

rule requiring holder of guaranty to use diligence to collect from principal does not require him to use due diligence to collect from others who may also be liable, 119 C 348

——so court correctly instructed plaintiff need not sue purchasers of cars on their agreements of liability for any deficiency upon repossession and resale, 119 C 348

court not in error in charging on Statute of Frauds though defendant did not raise it as defense, as it was not necessary to plead it specially, 121 C 397

——omission to note exception under statute prejudicial, if at all, to appellee, 121 C 397

certain statements de part performance and de estoppel construed not to be erroneous; and harmless in any event, 121 C 397

charge that duty to give notice under liability policy does not arise in case of trivial accident, and is complied with if given within reasonable time after situation assumes aspect suggestive of claim, sustained, 121 C 486

——and that determinative question is whether facts known to assured would require person of ordinary prudence to believe that liability may arise, 121 C 486

charge that if assured decided no notice was necessary, it assumed responsibility if liability did occur, correct when limited by statement that this would be so only if reasonable person would have anticipated liability, 121 C 486

whether defendant was prejudiced by delay in giving notice was not issue in case and court did not err in failure to charge that prejudice must be shown, 121 C 486

in absence of request, court not bound to charge de claim that defendant waived all its defenses except delayed notice, 121 C 486

no basis for claim that charge was so worded that jury must conclude that unless notice was actually written and signed by insured it would not be effective, 121 C 486

agreement of indemnity; court disregarded distinction between contract to indemnify against liability and one against loss; claims of proof showed it might be latter, 122 C 20

——if evidence left nature of agreement in doubt, court should have given appropriate instructions to enable jury to determine liability according to the agreement they found had been made, 122 C 25

services rendered deceased; pleading, 124 C 45

de recovery of reasonable value of services on implied contracts, where express contract is alleged, 125 C 10

breach of warranty by seller as to wholesomeness of food sold; no action by party not privy to contract, 125 C 92

that contract between attorney and client as to amount of fee not effective unless amount found reasonable, erroneous; only when amount is result of fraud, misrepresentation, coercion or unconscionable advantage taken can court interfere, 127 C 388

——and instruction limiting amount recoverable on quantum meruit to amount actually retained by attorney, erroneous, 127 C 388

duty of defendant, as surviving partner, in sale of partnership assets, 127 C 700

whether reductions from established price of liquors were inducement to purchase within prohibition of liquor regulations was issue of fact for jury under appropriate instructions, 128 C 433

——if they were, sales were void under statute and no action could be maintained for price of liquor, 128 C 433

agreement to repair where tenancy was parol monthly lease; trial court correctly left it to jury as question of fact to determine how long agreement ran, 128 C 493

failure of court to charge de established principles applicable to inadequacy of consideration for release, reversible error, especially in view of request, 129 C 403

§ 26. Criminal Law

§ 27. ——In General

charge, as to insanity, *held* correct, 40 C 139, 142

in criminal prosecution, instruction that, if jury finds facts as claimed, accused is guilty and that law is valid, is proper, 65 C 287, 69 C 133

instruction permitting jury to decide the law is error, 75 C 218, 234

accused may claim that he has committed no crime, or no crime within the indictment;

charge should be adapted to such claims, 75 C 334
suggestion that defendant may take no benefit from hypothesis he suggested, harmful, 75 C 334
charge as to liability of accessory where accused employed another to commit crime, 76 C 342
an explanatory statement in a charge favorable to accused is not error, 83 C 160
in criminal cases court must state its opinion on all questions of law and submit to jury both law and facts without any direction as to how to find verdict, 83 C 597
charge de good character of accused, 83 C 601
after once charging that guilt or innocence of each defendant must be separately considered, not necessary to repeat it, 84 C 152
not error in charge to give more time to State's case if claims are voluminous, 84 C 153
omission in latter part of charge of an element of crime previously explained, no error, 84 C 411
charge that, if one was found mentally unsound, there could be no crime, good, 87 C 5, 12
court may, but is not ordinarily bound to instruct jury that state's attorney's expression of belief of guilt and the filing of the information should not influence them, 92 C 658
charge should define "accessory" in a crime, 96 C 420
right of court to interrupt counsel during argument with a statement of the legal principles as he will charge them, 97 C 462
all elements constituting crime charged must be put before jury, 102 C 634
——but if evidence is undisputed as to one element court need not go into it exhaustively, 102 C 634
guilt of one who aids or abets another is fixed by statute, 102 C 635
——ordinarily no occasion in charge to deal with it on basis of possible partnership or agency, 102 C 635
definition of juror's duty in State v. Smith, 49 C 376, should be reserved for reading in event of disagreement, 102 C 708
improper to charge that police officer loses all usefulness if found untruthful, 102 C 711
instruction that jury are "to consider all the claims of counsel," *held* not erroneous, 105 C 757
de accomplice and accessory *held* too favorable to accused, 105 C 757
court may convey impression that it believes accused guilty of some crime, 105 C 757
charge that is adequate and does no injustice will be sustained, 105 C 757
where commission of crime not in dispute and only question is who did it, court may so remark, 105 C 757
not enough merely to read statute to jury where one is charged as accessory, 110 C 410
——cautions as to defense of alibi *held* not improper, 110 C 410
effect of plea of guilty to information in alternative as an admission, 111 C 209
charge that State does not desire conviction of innocent persons but where evidence establishes guilt does expect jury to so find, sustained, 115 C 675
charge in State v. Smith, 49 C 376, approved as proper instruction where jury has failed to agree within reasonable time upon verdict, 118 C 501
rules of evidence in proceedings before grand jury, 126 C 71
that absence of motive might well tend to raise a reasonable doubt as to guilt not erroneous on ground that absence of motive would tend to prove innocence, 127 C 593
that jury should be prepared to answer either guilty or not guilty as to each defendant, in accordance with custom where more than one accused are on trial, 127 C 593
in criminal case charge should give instructions sufficient for jury to understand nature of offense and questions to be decided, to weigh evidence and intelligently decide issues, 127 C 594

§ 28. ——Reasonable Doubt; Presumption of Innocence; Requirement of Two Witnesses in Capital Case

under statute, court not bound to charge that witnesses must be "competent and reliable," 49 C 384
——witnesses could not have testified unless competent, 49 C 384
——whether "reliable" wholly for the jury, 49 C 385
——jury must judge whether the evidence is "equivalent to two witnesses"; whole duty of court is to call attention to language of statute, 49 C 385
——not essential that there should be two or more witnesses to every important fact; true rule stated, 49 C 385
charge that evidence was not equal to that of two witnesses and did not warrant verdict of murder in first degree, *held* not an implication that jury should convict of murder in second degree, 56 C 418
charge as to reasonable doubt, 64 C 329, 65 C 285, 68 C 436, 72 C 40, 74 C 527, 75 C 330, 79 C 589, 87 C 573
——applicable only to essential elements of crime; "moral certainty," 75 C 326
burden and amount of proof in murder trial, 77 C 267, 79 C 589

request to charge, by defendant in rape case, that if evidence of his chastity came from respectable witnesses it fortified presumption of innocence, *held* properly refused, 84 C 222

after explaining meaning of "reasonable doubt," no error to use phrase, "considerable doubt," 92 C 59

charge that good character is available to accused and in close case may raise reasonable doubt, but if case is clear, no defense, is good, 92 C 658

requirement as to testimony of two witnesses or its equivalent in capital case, 97 C 465

charge as to reasonable doubt requiring removal of every reasonable hypothesis of innocence, approved, 99 C 114

test for determining weight of testimony *held* adequately presented, 105 C 757

charge upheld against claim that it placed burden of proof as to alibi on accused, where error immediately remedied, 108 C 53

effect of presumption of innocence, 108 C 454

——charge that it protects accused "unless and until" jury are satisfied of guilt upheld, 108 C 454

rule of reasonable doubt; charge that it should not be used to acquit guilty man *held* proper, 108 C 454

not necessary in criminal case to charge as to presumption of innocence where burden of proof is put upon State, in absence of request; but it is better to do so, 112 C 121

evidence in support of alibi to be considered together with all other evidence upon question of reasonable doubt; jury should be so specifically instructed, 120 C 498

§ 29. ——Homicide Cases

need not charge that witnesses must be competent and reliable under statute, 49 C 382

——whole duty of court is met by calling attention to language of statute, 49 C 385

court is not required to charge that particular fact is of "exceeding importance," 49 C 387

——drunkenness as bearing on criminal intent; charge *held* clear and correct, 49 C 387

charge de killing in resisting entry to make unlawful arrest, *held* correct, 57 C 311–323

charge de murder *held* to violate statute, 63 C 55

charge de intoxication as bearing on intent to kill *held* sufficiently favorable to accused, 63 C 391

calling attention to admission of accused in a capital case, 78 C 18

self-defense; malice, 79 C 589

charge held not to assume existence of corpus delicti, 81 C 22

comment that the death of the decedent in the manner and by the means set forth in the indictment did not appear to be contested *held* proper in that it could not be construed to mean that the accused did not contest his liability, 83 C 160

statements regarding accused's being under influence of liquor upheld, 83 C 161

error to instruct jury to consider one fact in determining whether accused believed decedent intended to kill him; must consider all, 83 C 261

charge on question of alibi in criminal case approved, 84 C 152

if it appears that two had agreed to kill and both were present, there can be a charge of criminal conspiracy, 84 C 152

charging that one must have made assault with intent to kill and with malice aforethought *held* good, though it did not define malice aforethought, 84 C 472

malice aforethought defined by calling jury's attention to the evidence, telling them what the conclusion of law is, and that verdict should be on state of facts they are warranted in finding, 84 C 472

when justifiable and excusable circumstances are present for manslaughter, court should define them; if not present, jury should be left to determine whether it was murder in first or second degree, 84 C 472

charge regarding jury's consideration of character upheld, 84 C 472

after charging as to murder in the second degree, court stated that, if certain conditions attended the killing, then no higher degree could be proved, *held* good, 87 C 5

charge that killing must be wilful, deliberate, and premeditated with an explanation of the meaning of the terms, is good as to murder in the first degree, 87 C 5

charge that if one is so intoxicated that he cannot perform a wilful, deliberate and premeditated killing, it is not murder in the first degree, good, 87 C 5

court can refuse to charge that low mentality excuses criminal responsibility, 87 C 6

if case rests on one's own acts and not on criminal conspiracy with others, court can charge jury to acquit all but one of the accused, if evidence does not connect them, 87 C 285

in absence of evidence of insanity, cannot charge as to the effects of it in murder, 87 C 285

even if counsel for accused states that no claim is made that crime was less than murder, accused is entitled to charge as to manslaughter if there is any evidence to show it, 87 C 285

charge de intoxication, 87 C 291

if one is subject to delirium tremens, court can charge that a fall which causes them is legal cause of death, 87 C 573

——conviction of manslaughter for driving so recklessly as to cause deceased to be thrown from car, 87 C 573

——charge is correct that, if death is due to delirium tremens independent of fall, there should be acquittal, 87 C 573

in homicide, where two are charged with the crime, court should instruct as to effect of the statement of one out of court, 88 C 164

charge correct as to what provocation reduces murder to manslaughter, 88 C 177

——calling attention to alleged actions of decedent towards accused, *held* harmless, 88 C 177

charge *held* not susceptible to interpretation that no matter what the object of intruder was, he might be killed to prevent an entry, 88 C 360

charge that, even if one has a right to see his child, he cannot break violently into the house to do so, *held* good, 88 C 360

no error to refuse to charge that, on verdict of insanity, accused will be subject to restraint, 96 C 238

need not charge that peculiarly atrocious details of a murder were to be taken into account in connection with mental deficiency, 96 C 238

error to charge as to mistaken identity of victim where facts afford no basis for finding of such mistake, 100 C 208

trial court may to reasonable extent indicate its opinion as to degree of homicide established by evidence, if believed, 103 C 453

charge as to right of jury in murder case to bring in lesser verdict, 103 C 456

——to suggest that no basis for manslaughter verdict or one based on excusable homicide exists, 103 C 484

charge in criminal case as to motive or its absence approved, 110 C 55

where charge of murder brought under § 6716, Rev. 1918, accused not entitled to charge that agency must be proved, 110 C 55

that negligence of victims of crime did not nullify crime, correct, 110 C 55

charge de malice aforethought; homicide, 110 C 303

self-defense in homicide case, 113 C 209

evidence of existence or nonexistence of motive as factor in trial for murder, 115 C 344

accused killed officer who was illegally arresting him in home without warrant; evidence that accused thought he was being attacked by gangsters; charge *held* inadequate to define rights of accused, 115 C 638

evidence in support of abili is to be considered, together with all other evidence, upon question of reasonable doubt, 120 C 498

——defendant entitled to have jury specifically so instructed, 120 C 498

defendant left apartment armed with revolver with intent to commit burglary and after breaking into store and stealing radio, shot policeman who accosted him on street, 121 C 669

——charge de premeditation inadequate in giving no significance to conduct of defendant by setting out armed to commit burglary, 121 C 669

——and in giving impression that small interval of time between accosting of defendant by officer and the shooting was test of, 121 C 669

§ 30. ——Miscellaneous Cases

where defense was that wife committed the crime, allusion by court in charge, to Adam and Eve, *held* error, 63 C 51

——also language calculated to create erroneous impression in jury as to belief of the court that they should convict accused if wife was innocent, 63 C 54

complainant's reisistance to attempt at rape, 72 C 40

charge *held* not to have left with jury to fix standard of conduct of driver accused of criminal negligence, 82 C 671

correct to charge in embezzlement that one retaining money with honest intent is not guilty, 83 C 449

request refused that removes from jury determination of truthfulness of accused's statements made after arrest, 84 C 222

in rape, not entitled to instruction that rape is an accusation easy to make, hard to prove, and harder to defend, but such charge can be used by way of caution, 84 C 223

in rape, error to charge that evidence to prove accused's chastity, if believed, should change the scale in doubtful cases, 84 C 223

charge *held* incorrect that authorized conviction of employee for nuisance created by his master, 88 C 716

on trial for theft of property "mislaid" *held* no basis for charging concerning property lost or abandoned, 89 C 564

in violation of motor vehicle law, error to charge that it was enough to show one, not a jitney, had accepted and carried a passenger for hire, 92 C 583

——must show soliciting, receiving and carrying passengers for hire, 92 C 583

no error in defining theft not to use the word "feloniously," 96 C 420

no error not to explain meaning of "overt," 96 C 420

no error, where one is charged with theft and attempt to commit theft, to charge that

guilty on one count might affect credibility on other count, 96 C 420
charge de possession of burglar's tools in night season *held* proper, 97 C 261
charge de alleged abandonment of a conspiracy upheld, 97 C 332
charge that after accused had received bonds for certain purpose he sold them and converted proceeds with intent to defraud, charges embezzlement, 102 C 658
inciting strikers; not improper to charge that if speech alleged was proved "intent seems to me to follow as matter of course" and that much of testimony had little to do with main issue, 102 C 726
——charge as to proof of criminal intent, 102 C 726
failure to charge that verdict of simple or aggravated assault possible, *held* harmless where verdict of robbery by violence returned, 105 C 757
defense of alibi in robbery case; charge de question of proximity *held* proper, 106 C 260
where entire charge in arson case was made to rest on intent to defraud, failure of court to notice amendment to law broadening it to include intent to defraud, prejudice or injure, nil sig., 109 C 394
embezzlement; fraudulent intent, 112 C 39
theft of automobile; court correctly stated that accused was not charged with operating without owner's permission, 113 C 103
charge that defendant had no right to arrest plaintiff's intestate for adultery without warrant unless he had speedy information of crime, sustained, 115 C 279
conspiracy; elements of, 116 C 433
carnal knowledge of feeble-minded or imbecile female under forty-five, 118 C 501
that if jury found accused received in New York liquor stolen in Connecticut and then transported it to Connecticut they were guilty of theft, sustained, 119 C 29
charge as to obvious character of liquor sold to accused and illustration, upheld, 119 C 29
charge as a whole did not overemphasize claims of State and fully presented those of accused, 119 C 29
that chemical analysis not only method of proving liquor "alcoholic" within Liquor Control Act, but that all evidence may be taken into account, sustained, 119 C 436
defendant charged with forging surety's name on replevin bond and with falsely testifying that surety signed it; *held* testimony was material where principal issue in the case was whether principal signed bond, 119 C 455
——but court was in error in not charging as requested concerning defendant's claim that he so testified under mistaken apprehension and therefore without wilful or corrupt intent, 119 C 455
court's charge that it was an "undisputed fact" that beer delivered to minor was intoxicating justified, 120 C 39
Liquor Control Act; charge that delivery by permittee of liquor to third person, knowing it was to be consumed by minor, though with parent's consent, was violation of act, upheld, 120 C 39
rape; that force must be found sufficient to overcome resistance of complainant correct; refusal to charge that resistance must have been to "utmost limit of her power" or that she made "every possible effort" to prevent act, correct, 122 C 604
charge with reference to reckless driving under Cum. Sup. 1935, §§ 566c and 567c and its failure to explain application to claims of proof, commented upon, 124 C 266
conspiracy in connection with strike; charge that boundary between lawful and unlawful conduct is that between persuasion and intimidation sustained, 124 C 555
——charge that proof is not often made by direct evidence but by proving repetition of acts tending to show mutual purpose of defendants, correct as against claim that such repetition must be of acts of single individual, 124 C 555
failure to charge explicitly that if those defendants charged under second count with burning truck were found not guilty, this charge should be laid out of consideration so far as it was part of first count, not prejudicial, 124 C 555
driving under the influence of liquor; issue of defendant in operating car both before and after accident properly submitted, 125 C 399
——definition of "operating"; where car is disabled, 125 C 399
conspiracy to defraud city of Waterbury, 127 C 543
——charge properly covered requisites; certain portions, erroneous if standing by themselves, correct when read in connection with remainder, 127 C 584
charge that defendants guilty if single conspiracy proved but that defendants who were parties only in several distinct conspiracies should be found not guilty, correct, 127 C 545
charge adequate as to definition of crime of embezzlement, effect of Statute of Limitations, relevancy of existence of various claims of proof on question of felonious intent and effect of retention of fees for collection, 128 C 273
specific definition of terms appropriation and conversion unnecessary where meaning

plain from general discussion in charge and it was assumed, even by defendant, that an appropriation and conversion of some amount existed, 128 C 273

§ 31. Damages

when new trial granted for remarks in laying down incorrect rule of damages, 9 C 112

no error to remark that in certain class of cases often heavy damages are given, 46 C 608

——and that they should be, if jury finds the aggravating facts referred to, 46 C 608

——breach of promise with seduction; charge as to damages, 46 C 609

charge that in suit by husband and wife for personal injuries to her she was entitled to recover expenses of sickness, *held* ground for new trial, 56 C 486

——verdict not saved on presumption that jury included no improper element in the damages, 56 C 487

——although no claim for such damages was made, no evidence offered and no request for such charge, 56 C 478

——nor was verdict saved on presumption that wife paid such expenses from her separate estate, 56 C 489

instruction to compute interest to date of trial and include it in verdict, *held* not erroneous, 56 C 555

——where case depends wholly on a question of law, 56 C 556

where question is as to whether damages were in contemplation of parties, judge should charge jury that they are not bound by his ruling admitting evidence of damages, 67 C 473

damages in action to recover commission for sale of real estate where contract is silent, 75 C 200

charge should limit verdict to amount of damages prayed for, 75 C 263

exemplary damages, 79 C 267, 298

charge permitting recovery beyond allegations of the pleading is erroneous, 81 C 487

action of trespass for undermining foundations; charge limiting damage to their cost as representing cost of restoration, upheld, 82 C 595

correct charge regarding damages for pollution of a stream, 83 C 420

charge that jury should consider injuries that plaintiff "has undergone and will undergo," and "probabilities of future improvement rather than possibilities of non-improvement" upheld, 85 C 438, 440

in absence of proof of market price of article sold or of available market, no error in instructions given as to damages, 85 C 613

where plaintiff's evidence of damage is slight, defendant is entitled to an adequate charge on question of damages, 86 C 9

failure to state maximum damages that could be rendered *held* not error, 87 C 150

if no claim is made by father for services of daughter, no error not to charge as to his rights, 88 C 265

correct to charge that plaintiff in personal injury case cannot recover for any bills that defendant has paid or assumed, 89 C 14

charge in false representations case correct which leaves to jury to determine how much of loss was direct, proximate, and essential, 90 C 625

no error to fail to instruct on immaterial matter in absence of request; failure to charge on damages in breach of warranty, 91 C 186

in case of obtaining property by fraud, court cannot charge that increased value at time of trial should be considered, 91 C 404

error in charge respecting damages is immaterial, if verdict is for defendant, 91 C 581

cannot allow jury to increase actual or compensatory damages in slander or libel though malice may enhance damages, 92 C 237

charge that one can recover necessary expenditure and a reasonable profit which might be 10 per cent *held* insufficient, 92 C 427

charge that damages should be what would fairly compensate for loss of net earnings during expectancy of life after reaching twenty-one years of age, good, 92 C 678

new trial must be ordered for error in instructions de damages, 93 C 413

charge as to amount of damages in action for breach of contract to manage defendant's farm, 94 C 613

in conspiracy to commit a fraud, court must charge that value of material left in plaintiff's hands when enterprise abandoned should be deducted, 95 C 79

if jury did not reach question of defendant's damages, need not consider error in charge, 95 C 530

error, in alienation of affections case, to charge that jury must assess damages for complete and continuing loss, since extent and continuance of loss is within their province, 95 C 556

——nominal damages are not adequate, 95 C 556

error to charge that loss of use of car could be considered if there is no evidence of value of such use, 96 C 337

for breaking up troop of performing lions by attaching a part; charge *held* to afford defendants no cause to complain, 99 C 594

measure of damages in fraud action, 100 C 406

charge as to recovery for loss of future wages approved, 101 C 65
charge must cover all certain and possible items of recovery, 102 C 144
duty of court to adequately explain elements of compensation in personal injury case, 102 C 145
——instructions as to general principles not enough, 102 C 145
effect of improper or unskillful medical treatment in personal injury actions, 102 C 162
where trial judge applies one of two conflicting rules of damage, he should state which, 103 C 390
damages in fraud action, 103 C 759
must state specifically the rule of damages to be applied; general principle of compensation in all tort actions not sufficient, 103 C 759
lengthy charge as to damages to business and property from trespass *held* proper, 104 C 54
in action for abuse of process, error not to adequately define and limit compensatory and exemplary damages, 105 C 177
in action by attorney to recover reasonable value of services, 105 C 436
failure to furnish adequate guidance for computing damages is reversible error, 106 C 95
loss of future earnings capacity of minor child, 106 C 310
error in charge on damages may be cured by remittitur, 107 C 568
defendant *held* entitled to charge that jury could not resort to speculation, surmise, or conjecture in determining damages, 108 C 669
measure of damages for illegal eviction by landlord, 109 C 164
where court twice charged measure of damages and confined proof to that measure, no harmful error because of inadvertent and erroneous statement in another part of charge, 109 C 164
damages for nervous shock; care required of motorman in sudden emergency; proximate cause, 112 C 476
damages for pain and suffering not proximately caused by defendant's negligence, 113 C 145
loss of plaintiff's business need not be proved in dollars and cents, 113 C 145
suit by margin customer against broker for failure to sell certain stocks and wrongfully selling others, 113 C 366
minimizing damages by seeking other employment, 113 C 457
libel case, 113 C 574
measure of damages for personal injury; mental suffering; putting life in jeopardy, 113 C 674
breach of contract; probable profits as basis of damages, 114 C 190
instruction of court on returning jury to reconsider verdict it deemed inadequate, that if they found for the plaintiff it should be for adequate damages, upheld, 114 C 398
alienation of affections of wife; mitigation of damages; punitive damages, 114 C 478
claim that mother aggravated minor child's injuries by resorting to Christian Science methods; effects on rights of child; on right of mother to recover for expenses, 114 C 590
damages for wrongful death; probable duration of life; mortality tables, 115 C 279
medical expenses; reasonableness of charges, 115 C 457
where elements of damage alleged overlapped, charge that all were proper elements *held* not improper, 115 C 471
charge that if jury found hernia was probable result of accident they should consider it, but not if it was only a possible result, sustained, 115 C 515
error in charge as to damages not material where verdict was for defendant, 115 C 712
in absence of request to charge, court not required to charge as to probability of accident and sickness which would terminate damages resulting from plaintiff's injuries, 116 C 32
alienation of affections; loss of consortium, 117 C 206.
court's charge that if plaintiff incurred bills for medical services which she was obliged to pay, it was not essential that they were actually paid, correct, 117 C 685
——and statute de expenditures by husband recoverable by wife when husband indorses complaint not applicable where obligations were incurred by wife herself, 117 C 685
court justified in submitting to jury amount plaintiff entitled to recover for loss of earning capacity though she was not then employed other than in preparing her work as designer for coming season, and had not been employed for some time, 118 C 427
allegations of injuries to brain and loss of brain function sufficient to support evidence of probability of epileptic seizures and charge calling attention to it, 118 C 431
loss of profits from business and expenses in connection therewith, 119 C 63
injury to automobile; general rule is difference in value before and after accident; repairs may be evidence of it; charge disregarding evidence of them error, 119 C 262
malpractice for removing moles; if lack of consent was established removal of moles was trespass entitling plaintiff at least to nominal damages; charge that both lack

of consent and special damages alleged must be proved, erroneous, 119 C 492

——but as prejudice to plaintiff limited to loss of verdict for nominal damages and costs it was not reversible error, 119 C 492

——and rule for assessment of special damages, limiting them to result of unauthorized operation without intervention of any improper act by plaintiff, stated with sufficient clearness, 119 C 492

that jury was to endeavor to ascertain what loss of income resulted from accident, eliminating all speculation, and limiting recovery to difference between fair earning ability before accident and after, unexceptionable, 119 C 591

tenor of charge such that jury must have understood they could not award damages for suffering and incapacity except in so far as these resulted from the injury received, 119 C 701

recovery of damages for impairment of earning capacity is not measured by loss of wages, 120 C 55

——fact that employer paid full wages not available to defendant in mitigation of damages, 120 C 55

——essential question is what is the pecuniary value of the time lost in consequence of the injury, 120 C 55

——and charge which did not direct and explain application of rule, but referred only to "loss of wages" was reversible, 120 C 55

charge that measure in personal injury case includes compensation for pain and suffering, physical and mental, expense of medical treatment, hospital bills, and only such damages as were caused by negligence, adequate, 120 C 259

contract to produce and deliver sales activator plan, 121 C 397

——charge that measure of damages for breach by purchaser is amount of profits plaintiff would have made, correct, 121 C 406

——no mitigation for compensation plaintiff might have received for other work as this was not contract for personal services but for performance of specific work, 121 C 397

——and if it were former, defendant not entitled to charge de mitigation as there was no evidence that plaintiff could have been gainfully employed elsewhere, 121 C 397

where court said nothing about nature of injuries or damages for any permanent disability, effect was to limit recovery to items of special damage enumerated and to pain and suffering, and charge was inadequate, 124 C 36

services rendered deceased; recovery not limited to amounts apportioned to several items in claim filed with administrator, 124 C 50

not essential, without request, to charge as to plaintiff's life expectancy in connection with permanent injury by loss of eye, 125 C 446

claims of proof insufficient to justify specific charge on permanent disability or future loss of earnings, 126 C 360

in action for material and services furnished, charge excluding circumstances, under general denial or special defense, going to reduce value thereof, too narrow, 126 C 554

liability for lighting up plaintiff's pre-exising arthritis, 128 C 62

plaintiff entitled to recover for all damages caused by wrongful act whether or not results were to be reasonably anticipated; test is, did act cause damage, not would such an act be likely to cause such a damage, 128 C 62

——so charge calling attention to slightness of impact and asking jury to determine what probably occurred from such an incident, erroneous, 128 C 66

recovery for injuries resulting from fright or nervous shock, 128 C 231

——court in error in charging plaintiff must prove contemporaneous injury of traumatic nature, though slight, where negligence caused him shock while within range of physical danger and this in turn caused injuries which would be elements of damage had bodily injury occurred, 128 C 231

——jury should be told to use caution in such cases, 128 C 231

right of married woman to recover expenses incurred by reason of injury in absence of statutory waiver by husband, 128 C 527

charge where claim is for future loss of earning capacity and probable duration of life is brought in by production of evidence or request to charge, 128 C 707

charge that damages should be considered only if liability was established, approved, 129 C 361

§ 32. Evidence; Burden of Proof; Pleadings

See also § 28 supra and § 35 infra

new trial granted if jury be not directed to pass on distinct pleas alleging distinct facts, 13 C 74

refusal to instruct jury to declare on which count verdict was based, *held* no ground for new trial when, 39 C 536, 47 C 291

charge de proponderance of evidence, "if you fairly and honestly believe it more likely to be true," etc., *held* correct, 52 C 57

court should, if requested by either party, direct a separate verdict on separate counts, 53 C 240

——where counts embrace distinct and independent causes of action, 53 C 240

charge de preponderance of proof, should in-

struct jury in case of exact equipoise of evidence, 54 C 273
——charge *held* sufficiently clear, however, taking it as a whole, 54 C 273
charge that if all the witnesses are equally credible one party had established his claim by a fair preponderance of evidence, *held* not to have diverted the jury from the question of fact, 55 C 369
charge de preponderance of evidence *held* erroneous, 57 C 65
charge as a whole *held* not to have misled jury de burden of proof, 62 C 524
to refuse certain request for charge as to burden of proof on issue of damages *held* error, 71 C 71
where complaint states cause of action at common law and one under statute, charge should distinguish them, 77 C 390
where two causes of action are joined, charge that plaintiff must prove all allegations of complaint is improper, 77 C 571
charge as to testing evidence by its probability or improbability, 80 C 537
where court has once called attention to withdrawal of count, charge need not refer to this, especially where no request is made, 81 C 280
——so where jury has been told that evidence is immaterial; but, if requested, this should be repeated, 81 C 330
duty as to charging where party has withheld evidence, 81 C 558
one charge as to burden of proof is enough, 82 C 199
omission to charge specifically on burden of proof as to negligence and contributory negligence, *held* not error under the circumstances, 83 C 174
correct to charge that one assumes the burden of proving the use of only such force as was necessary to repel attack, 83 C 466
no error to instruct as to what to do if there is an equipoise of evidence when jury told a preponderanec is necessary, 85 C 16, 19
proper to charge that no verdict can be based on evidence of purchases made on days other than those alleged, 85 C 448
in will case for undue influence, correct to charge that burden is on proponent unless will is in favor of one in a fiduciary capacity or analogous position of trust without explaining the latter, 85 C 459
correct to charge that credibility of witnesses is for the jury, 86 C 289
charge as to proof of case of negligence, 87 C 254
correct to state, that if evidence is equally balanced, one having burden of proof cannot prevail, 87 C 363
——but failure to charge on this point not harmful if jury told plaintiff must prove complaint by fair preponderance of the evidence, 87 C 363
a defendant who alleges a fact, which could have been proved under a general denial, assumes the burden of proof of that issue, 88 C 114
preponderance of evidence has reference to is quality or superiority, not the number of witnesses, 91 C 448
——if jury are so instructed, it is not error to add that superior evidence is such as, in judgment of jury, is more likely to be in accord with facts, 91 C 448
in case of broker's commission, charge is correct that burden was on defendant to show implied promise was modified by subsequent express agreement, 92 C 257
jury may be recalled to be told that recovery cannot be had on negligence not set up in complaint, 93 C 99
court can charge that complaint, if proved, is sufficient to sustain a verdict, 95 C 79
no error to refuse to charge that there has been a withholding of evidence where witness is in court and available by both sides, 96 C 428
expressions of doubt as to burden of proof *held* to be confusing and prejudicial, 97 C 178
inadvertent statement de burden of proof *held* not misleading, 97 C 385
burden of proof on complaint and counterclaim where complaint is admitted, 97 C 385
when defendant cannot complain of erroneous charge de burden of proof, 97 C 512
charge in reference to contributory negligence and cause of injury considered with reference to burden of proof, 99 C 475
circumstantial evidence, 100 C 567
adding to usual charge as to burden of proof, that fair preponderance of evidence was used in same sense as in every day life not error, 100 C 691
jury must be charged that each essential of action be proved by preponderance of evidence, 104 C 355
test for determining weight of evidence, *held* adequately presented to jury, 105 C 757
isolated instruction in civil case imposing burden of proof of "beyond reasonable doubt," *held* not reversible error, 106 C 506
admonition to disregard improper question, if given at time, need not be repeated in the charge, 107 C 156
charge should state effect of failure to produce that proof which is within power of party to produce, 107 C 670
instruction de burden of proof as to conditions precedent in insurance policies, 108 C 163
charge that defendant must prove all allega-

tions of answer is erroneous if some of them admitted, 109 C 1
charge that plaintiff must prove all his allegations incorrect unless explained, 109 C 221
duty of court where plaintiff calls defendant for limited purpose and his attorney is then permitted to examine him as to details of accident, 109 C 616
burden of proof in action for conversion of negotiable bond, 111 C 178
execution of will with requisite formalities; burden of proof, 111 C 253
where effect of presumption is merely to place burden of proof on plaintiff, it is better not to refer to it in charge if evidence is offered to contrary, 113 C 429
presumption that trustee acted properly till contrary is proven; burden of proof, 113 C 429
failure to charge as to weight to be given testimony of Superior Court judges not error in absence of request to charge, 113 C 457
where presumption merely goes to burden of proof and evidence has been offered upon issue, it is better not to refer to presumption, 113 C 490
court not required to withdraw from jury issue of whether miscarriage was caused by swallowing glass because there was no direct evidence or expert opinion, 114 C 36
variance between allegations and proof of negligence, 114 C 195
charge as to burden of proof in action based on fraudulent conveyance approved, 114 C 240
where defendant voluntarily alleges a fact provable under denial, court justified in placing burden of proof on him, 114 C 662
weight to be accorded testimony of handwriting experts, 114 C 694
charge that burden of proving negligence of plaintiff's decedent was on defendant, correct where latter affirmatively alleged it as defense, 115 C 658
duty of witness to come to court if subpoenaed even though he has given deposition; weight attached to failure to come, 116 C 389
reference to counterclaim was within scope of fair comment upon situation presented by its filing and arguments of counsel with reference to it, 117 C 15
defendant affirmatively alleged plaintiff's contributory negligence; *held* court did not err in charging he had burden of proving it though he attempted to eliminate this allegation by amendment after trial and verdict, 117 C 428
burden of proof, 117 C 518
——usual form of charge as to stated, and commended as having advantage of familiarity, 117 C 518
——but no peculiar sanctity attaches to the form of words and substituted phrases conveying same meaning not objectionable, 117 C 518
——as in instant case court charged that plaintiff must prove essential elements by the "better evidence," and defined this as meaning "the evidence which is more satisfying to you," 117 C 518
that failure of defendant to call available witness entitled jury to infer that his testimony, if given, would have been antagonistic to her own contention, 117 C 539
——rule applied though defendant's own testimony was only given as rebuttal to presumption created by statute, 117 C 539
where plaintiff alleged that deceased was in exercise of due care and defendant did not affirmatively plead contributory negligence, charge that burden of proof on issue was upon plaintiff sustained, 118 C 471
charge de burden of proof in death case upheld, 118 C 128
——not required that court inform jury what is meant by equipoise in the evidence, 118 C 128
court not bound to charge the jury as to meaning of equipoise of evidence, 118 C 135
charge de burden of proving contributory negligence of plaintiff's decedent in death case under statute *held* adequate, 118 C 210
charge placing burden of proof of due care on plaintiff in wrongful death case, where plaintiff alleged it and defendant did not set up contributory negligence as affirmative defense, upheld despite statute, 118 C 471
——quaere whether court would be justified in failing to regard the presumption created by the statute, 118 C 473
charge applying act of 1931 de burden of proof of contributory negligence in death case, where accident occurred before enactment of act but trial after, sustained, 118 C 531
where charge placed on plaintiff burden of proving defendant negligent, in absence of request, no error in failure to charge as to unavoidable accident from defective operation of brakes, 118 C 565
court's charge as to quantum of proof required to establish contributory negligence, sufficient, 119 C 277
effect of 1931 statute concerning pleading and burden of proof of contributory negligence in actions where injured party has died, discussed and cases reviewed, 119 C 339
——charge failing to instruct that under statute there was still presumption that decedent was in exercise of due care, though plaintiff affirmatively alleged it, approved, 119 C 339
argument of counsel of inference from failure of party to call witness; court correct in

telling jury to disregard argument, since witness was equally in control of both parties, 119 C 390

statute placing burden of proof of contributory negligence on defendant for negligently causing death or negligently injuring person who dies before trial does not apply to actions against municipality for injuries from failure to erect sufficient railing or because of defective road or bridge, 119 C 476

"you can draw inferences from physical facts only when those physical facts are established beyond question in the evidence," sustained in view of context and tenor of charge; jury not misled by "beyond question," 119 C 591

statute de proof of contributory negligence in death cases; burden of proof on issue rests on defendant, 123 C 25

——in submitting case to jury where statute applies, court need not specifically refer to it or charge in terms that there is presumption that deceased was in exercise of due care, if it makes clear the effect of statute, 123 C 25

——charge did not fairly give plaintiff benefit of statute, 123 C 25

where plaintiff was struck by bolt which she claimed was hurled by passing train, court in error in instructing jury to consider separately the two elements, the inferences from the circumstances and the evidence of defendant as to inspection of the car, 123 C 81

——should not have placed on defendant burden of satisfying jury that it reasonably inspected car in such a way, in effect, as to make it a special defense, 123 C 81

where plaintiff voluntarily assumes affirmative on issue, he cannot complain if court charges he has burden of proving it, 125 C 197

burden of proof on contributory negligence in death case; charge as a whole satisfactory, 125 C 527

using word "establish" in referring to essentials to be proved instead of "prove," not erroneous, 125 C 671

where plaintiff pleaded due care on part of intestate, defendant entitled to charge that he thereby assumed burden of proving it, having waived statute, 126 C 396

that plaintiff had burden of proving material allegations, sustained; general tenor of charge sufficient to apply rule to damages, 129 C 122

court in error in charging that silence of party upon subject material to his cause and peculiarly within his knowledge "furnishes strong and often conclusive evidence" that he does not speak lest truth hurt his cause, 129 C 403

error to charge that burden was on plaintiff to prove that his slipping on tree was not accidental, in high tension wire accident, 129 C 607

§ 33. Fraud; Libel and Slander; Testamentary Capacity; Undue Influence

charge de malice in fact in libel, *held* correct, 57 C 76

charge de presumption that one intends natural consequences of his act, *held* correct and applicable to libel case, 57 C 80

charge that agreement signed by appellees reciting incapacity of testatrix to manage her property was to be considered with all other evidence de capacity, *held* correct, 57 C 127

weight of testimony de testamentary capacity is for jury under instructions of court, 57 C 128

duty of court to guide jury by clear statement of the law de undue influence, where burden of disproving is not clearly upon proponents and matter is for jury on all the evidence, 59 C 226

charge de what capacity is sufficient to make a will *held* to withdraw evidence of incapacity from minds of jury and to mislead, 59 C 245

charge de fraud *held* erroneous, 62 C 159

where will is claimed to be result of insane delusion, judge should define this, 68 C 428

court need not charge that brother and sister of testator are the natural objects of his bounty, 71 C 393

as to testamentary capacity, 72 C 306, 88 C 93, 111 C 253

undue influence, 72 C 319, 73 C 467, 85 C 459, 91 C 389, 111 C 253

court may warn jury that single admitted fact does not justify inference of undue influence, 73 C 467

where libel action is based on statement that one had not even the "externals of refinement," charge directing attention to plaintiff's appearance on witness stand *held* erroneous, 81 C 293

a request to charge, which ignores the distinction between the situation of a creditor before and after fraudulent conveyance may well be refused, 81 C 626

judge purporting to give a dictionary definition of fraud inserted the word deliberate; no error, 81 C 656

correct to charge that fraud must be proved not presumed, 82 C 623

charge de undue influence is good if it states that burden is on opponent of will except where will is in favor of one in fiduciary capacity or a clearly "analogous position of trust" without explaining the latter phrase, there being no evidence to bring case within such exception, 85 C 459

correct to charge that fraud vitiates contracts of all kinds, 86 C 101

correct to charge that mind must be sound enough to understand the business in which one is engaged while making a will, 88 C 93
error to charge that son must prove lack of undue influence and fraud on father, 88 C 214
charge de causation between false representation and loss, sustained, 90 C 625
omission, in will contest, to charge as to presumption of sanity upheld; if given, might mislead jury, 91 C 388
no error to charge that one defrauded can recover if he is not in pari delicto, though no reference is made to the fact that he is bound to know the law, 93 C 691
trial court need not define fraud in general terms; may state that complaint if proved is sufficient to sustain verdict, 95 C 79
in libel, charge concerning admission of falsity by pleading truth *held* not improper taken as a whole, 95 C 482
undue influence claimed to have induced gift, 97 C 713
charge that assumed that verdict would be the same for both personal and real property, *held* proper; question of transfer of gifts, 97 C 718
in will contest, ordinarily there is no need to mention presumption of sanity, 99 C 424
——but if mentioned charge must give adequate explanation, 99 C 424
undue influence; mental capacity, 100 C 453, 101 C 603
privilege in libel and slander, 102 C 448
rule of damages in action for fraudulent representations; must be specifically given in charge to jury, 103 C 759
where claim was that defendant falsely represented financial responsibility of Z and so induced plaintiff to take his note, charge *held* insufficient, 104 C 355
——charge must not merely define fraud but be an adequate guide in particular case, 104 C 355
jury must be charged that each essential of action be proved by preponderance of evidence, 104 C 355
where, in action to reform deed, allegations of fraud were made, charge that proof of fraud was not required sufficient without specific charge to disregard allegations, 109 C 292
testamentary capacity; undue influence; confidential relationship, 111 C 313
charge as to malice in fact in action of libel against newspaper, 113 C 580
agreement to make a will; undue influence, 114 C 247
conspiracy to cheat and defraud; limitations, 114 C 354
charge of court upon issue of fraudulently obtaining release of liability, sustained, 115 C 513
fraudulent representations in purchase of real estate; elements and burden of proof, 116 C 433
defendant conveyed home to plaintiff wife with purpose (as he testified) of creating estate beyond reach of creditors; *held*
——question of presence of fraud was open one for jury under proper instructions and should have been submitted to them, 117 C 289
——and charge stressing element of resulting trust only was error, 117 C 289
slander; charge that no issue of justification was raised by pleadings upheld, 117 C 599
effect of failure to tender back amount paid for release where claim was made that release obtained by fraud; unnecessary to charge where point not raised by pleadings or otherwise at trial, 122 C 429
reliance on false representations, 122 C 434
in action against Hartford Retreat for fraud and deceit in procuring plaintiff's signature to consents to remain, defendants entitled to legal definitions and to have them applied to facts, 123 C 646
effect of transfer of stock without consideration by defendant shortly after suit brought, properly left to jury as question of fact, with adequate instruction, 125 C 10
testamentary capacity; charge deficient in failing to include specific statement making clear that controlling question was condition at time of making will "and none other," where there was evidence of her condition at other times, 126 C 294
——see dissenting opinion, 126 C 306
one sentence of supplementary instruction de undue influence did not remove issue from jury in view of previous full instructions, 128 C 379

§ 34. Miscellaneous Cases

error to read report of particular case to influence action, 46 C 608
allusion to decisions not in fact made, is no ground for new trial, when, 47 C 552
refusal to charge that each juror must act uninfluenced by opinions of others, no error, 49 C 386
charge de record of former suit, that jury were to determine what claims were made and what the decision rendered thereon was, *held* erroneous, 57 C 64
——where record was admissible only to show a claim of a different agreement, 57 C 64
charge that jury must not be influenced by what they had heard counsel read from law books *held* correct and to be commended, 59 C 400
remark of judge, in admitting evidence, to effect that he was probably overruling the Supreme Court, *held* to weaken its effect with jury, 63 C 49

where defendant claims accord and satisfaction, request to charge that, if true, plaintiff cannot recover, should be granted, 64 C 129
charge need not embody hypothetical case, 68 C 261
acquisition of settlement by pauper, 73 C 51
need not charge as to usual habit of men to obey the law, not commit indecent assaults, etc., 74 C 54
one reference to a statute is enough, 78 C 18
notice to indorsee of note, 78 C 184, 82 C 26
refusal to charge as to privileged character of communication, where defendant denied all knowledge of it, is proper, 78 C 368
charge that jury must say whether, from the "usual custom," a lease did not terminate at certain time is improper, especially where party refused to produce a written lease, 79 C 18
should state all that is necessary for jury to decide correctly; viz., that a certain date was Sunday, 81 C 489
charge upheld in case where two parties claim by adverse possession which was left as a matter of fact for the jury, 82 C 595
if jury remain through arguments to direct verdict, they should be warned that the arguments are for the court alone, 83 C 320
where a charge has been properly given using the word "might," it is not improper to use afterwards the word "should," 83 C 466
charge to disregard what may have been said by counsel is not error if it appears that it refers to duty to take the law from the court and not from counsel, 84 C 463
in adverse possession, charge *held* not to mean that possession must be adverse to everybody, but only a statement of the purposes for which evidence was offered, 84 C 570
on question of domicil of pauper, it is correct to take into consideration mental capacity, manner, mode of life, where he lived, etc., 85 C 55
in forcible seizure charge that, if one was a lodger and not a tenant, the landlord was entitled to a lien, *held* good, 86 C 263
charge is good that husband alone is liable if he acted alone, but if wife acted alone or he as her agent, then wife liable, 86 C 263
if parties agreed that there had been a total alienation of affections, no need to charge on partial alienation, 87 C 406
charge de alienation should not state that plaintiff must prove enticement as well as alienation, 87 C 406
in alienation of affections, charge is proper that plaintiff must prove that defendant "knowingly and intentionally" was "the controling and effective" cause of their loss, 87 C 406
correct if it states defendant's claims and says "if you find the facts as stated," verdict for defendant, 88 C 643
charge correct on twofold aspect of a case (common-law liability and under federal statute) is not inconsistent or confusing, 90 C 261
charge is erroneous which states that wife's property on marriage vests in husband as trustee, refuses to state that husband is under no legal obligation to exercise such authority, and that wife could give property to husband, 90 C 677
in malicious prosecution, charge is proper that jury should consider motive of the act, 91 C 448
correct charge as to imputed notice, 91 C 490
where one claimed that payment was a commission and the other that it was usury, it is important to charge on comparison between worth of services and amount paid therefor, 91 C 601
charge treating a wrong doing as an accident, unless evidence warrants it, is erroneous, 92 C 388
correct charge as to requirements for subscribing to a will, 93 C 53
reference in charge to plaintiff's claim as his "theory" *held* proper, 93 C 598
correct to charge that, if the parties were not partners, those who participated were liable individually, 95 C 639
charge as to how jury should answer interrogatories; *held* that they could answer only as they found the facts, 96 C 2
no error where statement of court is simply a presentation of a claimed defense, not an attempt to treat matter of intent as immaterial, 96 C 420
no error to read a statute which was not basis of action but was stated only to show surrounding circumstances, 96 C 505
error to charge that jury "must feel an abiding sense" of the truth of the plaintiff's propositions, 97 C 474
referring to contributions of several persons as "this fund" *held* to correspond with issues and claims of party, 98 C 223
master and servant; cause for discharge, 103 C 553
where plaintiff relies on assault as of certain date, not error to restrict recovery to that date, 106 C 506
erroneous answer to question put by foreman of jury *held* reversible error, 107 C 126
proper for court to read statute having no bearing on issues but which serves to controvert improper argument of counsel, 107 C 562
mutual mistake, 109 C 292
wanton misconduct, 110 C 108
charge in answer to inquiry by jury as to letter and spirit of law which might be taken as authorizing them to depart from prin-

ciples of law to attempt justice, *held* error, 110 C 367
duty of court to construe written document, as record in criminal case offered in evidence in civil case, 111 C 212
five essential elements of proof in action to recover preference under Bankruptcy Act, 112 C 530
reference in charge to plaintiff's "injuries" not objectionable where defendant claimed that she received only slight bruises, 116 C 32
argument of counsel that decision adverse to city would impose duty to defend many similar cases, not ground for new trial when court charged jury to disregard it, 116 C 144
portion of charge seemed confusing only because in transcript two sentences were run together as one, 116 C 471
alienation of affections; failure to instruct as to basis of damages was error, 117 C 206
——as was failure to instruct on element of wrongfulness in defendant's conduct, 117 C 206
——where there was also count based on adultery alleging loss of consortium, jury should be warned against giving damages under both for same loss, 117 C 206
——also making time when wrongful acts occurred test of application of Statute of Limitations, rather than loss of right of consortium, 117 C 206
charge to jury, upon their reporting a disagreement, as to their duty to strive to agree, approved, 118 C 501
language of counsel in closing argument did not so far transcend limits of legitimate argument as to require action by court other than warning that verdict should not be influenced by sympathy or antipathy, 119 C 310
false imprisonment, 120 C 444
statement that it was duty of jury to be fair to defendant as well as plaintiff unexceptionable and particularly appropriate when plaintiff made appeal to jury to be fair to him, 122 C 257
conversion of stock pledged to corporation to secure note, 124 C 201
where question was whether defendants were engaged in common enterprise of taking bets, both liable though not a partnership or joint adventure; failure to charge specifically as to these of no consequence, 125 C 113
court correct in denying defendant set-off of plaintiff's winnings against his losses, 125 C 114
Statute of Limitations; part payment as tolling; burden of proof; payment by husband ineffective to toll statute against wife, 125 C 196
correct in refusing to charge that employees or subcontractors to be included in determining number of employees, 125 C 258
as to what constitutes partnership; profit sharing not sole or even essential test, 125 C 261
——charge as to necessity of agreement of partnership might well have included that it may be express or implied, 125 C 264
"employer who regularly employs five or more employees" equivalent to statutory words though not advisable, 125 C 265
characterization of claim as "perfectly absurd," while immoderate, was not prejudicial error, 125 C 677
new promise as removing bar of Statute of Limitations, 128 C 397
upon issue of sound health in insurance policy, 128 C 596

§ 35. Comments on Evidence

§ 36. ——In General

new trial not granted for remarks on weight of testimony, 8 C 438, 18 C 463
——nor for failure to remark, 11 C 281
new trial not granted if principles laid down, without remark on admissibility of evidence not objected to, 13 C 164
not court's duty to draw inferences from evidence, 19 C 570
right of judge to express opinion as to weight of evidence, 21 C 167
no power to withdraw evidence from jury on ground that it is insufficient, 34 C 538
a mere statement of claims of both parties is no error, 49 C 388, 389, 54 C 174
——statement reviewed and *held* not to be a conclusion of fact, 49 C 388
new trial not granted merely because court failed to draw proper inference from evidential facts, 51 C 543
court not bound to comment on bearing and weight of evidence when questions of fact are fairly submitted, 53 C 235
common practice of court to state claims of both parties to jury, 54 C 171
stating inclination of judge on question of fact, but not imposing his opinion, *held* no error, 55 C 223
how far court may discuss evidence and express opinion on its weight, 57 C 478
court may, within limitations, comment on evidence, 57 C 529
observations on evidence are in discretion of trial court and not ordinarily reviewable, 59 C 401, 64 C 338, 67 C 581, 70 C 715, 71 C 551, 72 C 40, 79 C 663, 80 C 88, 538, 82 C 518, 83 C 597, 85 C 180, 459, 88 C 93, 91 C 388
right of court to comment on evidence in criminal case, 64 C 330, 67 C 581, 72 C 40, 78 C 28, 81 C 98, 83 C 160, 87 C 6
court may state claims of counsel and law applicable thereto, 65 C 286.

in granting requests to charge, judge should make such comments as will aid jury to apply them, 66 C 551
may make fair comments and instruct jury that they ought to strive to agree, 67 C 578
court may comment on facts, but decision must be left to jury, 69 C 91
right of court to comment on evidence, 69 C 131, 72 C 320, 73 C 33, 118, 377; 79 C 116, 380, 87 C 691, 88 C 93, 90 C 275, 92 C 236, 579
court may omit such comments, 70 C 715, 72 C 321, 73 C 468, 83 C 266
——in absence of requests, 76 C 676
it is often desirable that judge should comment on evidence, 71 C 1
should call attention to evidence especially worthy of consideration, and may intimate effect on his own mind; need not lay equal stress on all evidence, 71 C 392
it may be duty of judge to express his opinion as to weight of evidence, 72 C 43, 73 C 468, 75 C 55, 79 C 117, 82 C 518
may caution against giving too much weight to one fact, 73 C 462
evidence admitted for one purpose should be limited to that purpose, 73 C 696, 78 C 351
need not caution as to weight to be given circumstantial evidence, 77 C 267
if evidence has no bearing on certain issue, judge may so charge, 78 C 18
should direct attention to evidence, 78 C 18
where evidence is so weak that verdict on it could not stand, court may tell jury to disregard it, 81 C 244
judge may state a conclusion of fact which jury could not reasonably avoid, 81 C 347
sufficient if court tells jury to consider all the evidence on a disputed point, 81 C 556
need not single out specific evidence as insufficient, 81 C 556
undue prominence must not be given to certain testimony and the remainder ignored, 82 C 24
method of calling attention to contradictions on cross-examination is discretionary with the court, 82 C 448
can comment on evidence if jury are not directed or advised how to determine matter, 83 C 160, 85 C 459, 86 C 252, 335, 87 C 285, 363, 88 C 94
discretionary with trial judge to comment on weight of evidence, 83 C 261
——not bound to tell jury certain facts may have great weight, 83 C 261, 266
discretionary how far court may comment on claim of counsel, 83 C 598
better to call attention to evidence and claims and explain the verdict that must follow each phase than deal in general principles, 84 C 483
can charge to disregard evidence erroneously admitted, 85 C 337, 87 C 165, 95 C 500
immaterial evidence admitted may be removed from consideration of the jury by the charge, 85 C 360
discretionary with court to discuss materiality or importance of particular facts, 86 C 16
credibility and weight and effect of conflicting testimony is for jury, 86 C 82, 98, 548, 90 C 701
can direct attention to evidence and comment on weight, 86 C 252, 87 C 363
judge in charge may mention matters about which there is no dispute, 86 C 335
where the correct principles of law have been stated, a brief application of them to the facts can be made, 86 C 416
charge can comment on weight of testimony but must not direct verdict, 87 C 285
evidence may be discussed in charge if issues are fairly presented, 87 C 692
judge does not invade province of jury by calling atention to facts admitted, 89 C 238
how far court can comment on weight of evidence is within its discretion so long as it is not abused, 91 C 388
court does not have to call jury's attention to some single bit of evidence; it is their duty to remember it, 92 C 59
court can express an opinion in commenting on evidence, 92 C 237
can comment on evidence; express opinion of weight but leave facts to the jury, 92 C 579, 93 C 691
where conclusion is apparent on undisputed facts, jury should be so instructed, 94 C 443
where question of law is complicated, correct to charge that facts alleged if proved, are sufficient to sustain verdict, 95 C 79
one of the functions of charge is to prevent jury from misusing evidence admissible only for a limited purpose, 95 C 146
no error to comment favorably on testimony if jury warned not to be influenced, 95 C 529
no error to refuse to express opinion on the evidence or to refuse to charge that jury should consider appearance and conduct of witnesses, 96 C 238
comments by court on credibility of witnesses not reviewable except in case of clear abuse, 96 C 239
if inadmissible evidence is admitted without objection, charge that it be disregarded is properly refused, 96 C 428
misstatement of fact in charge should be called to judge's attention at once; if not done it is presumed that jury is not misled, 97 C 479
——this presumption of no avail if jury are practically told how to decide the issue, 97 C 479
complaint cannot be made of statement of self-evident and indisputable fact, 98 C 141

statement of a self-evident and indisputable fact is harmless, 98 C 145

right of trial judge to comment on evidence in murder case and express his opinion, 98 C 467

——may question a witness, but must act fairly without bias or prejudice, 98 C 468

——trial judge not a mere moderator, umpire, or presiding officer, 98 C 470

charge must show how general principles are applicable to facts of case at bar, 98 C 492

comment upon evidence usually within discretion of trial court, 98 C 540, 99 C 482

court may comment on evidence if it does not attempt to control verdict, 99 C 242

——in criminal case may tell jury that if they find facts claimed by State they must find accused guilty, 99 C 244

court may comment on weight of evidence, 100 C 615

power to comment on evidence in criminal case, 102 C 708, 113 C 258

right and duty of judge in murder case to express opinion and comment on evidence, 103 C 456

not sufficient if charge contains merely legal principles; must state relation of law to particular facts, 104 C 355

power of court to comment on evidenec and credibility of witnesses in criminal case; may not direct verdict, 105 C 757

court may convey impression that it believes accused guilty of some crime, 105 C 757

trial court may assume the existence of a fact as to which the evidence is undisputed, 106 C 677

comments on evidence and expression of opinion proper, if all questions of fact are left to jury, 107 C 17

——this is matter of discretion, not reviewable in absence of unreasonable exercise, 107 C 17

court may state to jury that certain evidence is uncontradicted, if that is the case, 107 C 68

court may make comment necessary to counteract improper evidence, 107 C 562

where necessary, judge may and should discuss and express his opinion upon the facts, 108 C 115

court may properly express its opinion in commenting upon evidence to jury and its action will not be reviewed in absence of an abuse of discretion, 109 C 91

extent of comment largely a matter of discretion; where facts peculiar or complicated need is greater than where they are simple and within a narrow compass, 110 C 358

requirement that application of law to facts be pointed out is salutary and important, 111 C 41

purpose not to supplant arguments of counsel but to assist jury in applying law, 111 C 253

where issue narrow, court need not review evidence extensively, 111 C 313

should be more than statement of legal principles and should point out their application to facts claimed, 111 C 313

right of court in criminal case to comment on evidence and its weight, 113 C 258

where charge is necessarily very lengthy, not necessary to go into detail as to every element involved in evidence offered, 113 C 457

——charge should give jury sufficient guidance to dispose of case and should refer to facts sufficiently to make clear principles of law, 113 C 457

court not bound to discuss evidence of particular witness, 115 C 344

——extent of comment upon evidence largely matter of discretion, 115 C 344

not incumbent on court to comment on all the evidence; extent of comment discretionary, 115 C 508

right and duty of court to comment on evidence; jury should be left free to decide issue of fact; court should be careful not to misstate facts or evidence; comment should be reasonable and fair, 116 C 471

——except for these limitations, matter rests in discretion of judge and error can be found only where it is abused, 116 C 471

court may call attention to evidence or inference which seems to have been overlooked or not sufficiently emphasized, 116 C 471

——often should caution jury against giving too much weight to certain evidence, 116 C 471

——or should restore to proper proportion evidence or elements unduly emphasized by counsel, 116 C 471

comment should not take on nature of argument of case for one party or the other or deal largely with details of evidence, 116 C 471

not ordinarily error to fail to instruct jury that if witness testified falsely upon one subject they might disregard all his testimony, 116 C 678

court has right to instruct jury to disregard evidence which, though admitted without objection, is essentially lacking in probative effect, 118 C 677

——plea of guilty to general charge of violation of rules of road not admission of breach of any particular rule, 118 C 677

no duty rests on court in absence of request to comment on weight or significance of particular bit of testimony, 119 C 390

error for trial court to state fact to jury as to which evidence is conflicting, 122 C 236

extent to which court comments on evidence is largely matter within its sound discretion, 122 C 253

——depends on facts and manner in which case has been tried, 122 C 253

——when arguments of counsel have fairly presented case, discussion of details of evidence may defeat proper purpose of charge, 122 C 253

it is right of court to discuss and comment on evidence, 123 C 173

——remarks did not exceed bounds of proper comment, particularly as court told jury they were not bound to accept its view of evidence, 123 C 173

while court may and often should express its opinion to jury on facts, it should not indulge in argumentative presentation of claims on one side, 124 C 309

——that jury was told it was its duty to recall the evidence will not save such a charge, 124 C 315

right of comment well recognized; but to go further and advise jury what judge thinks verdict should be is improper, 126 C 484

court properly stated testimony and left finding of facts to jury, with admonition that it was for them to evaluate testimony, 127 C 487

right of court to comment on evidence well established but such comment must be reasonable and fair, 128 C 654

——court should discuss evidence in such way as to enable jury to understand real issues, 128 C 654

§ 37. ——Comments on Witnesses in Civil Cases; Credibility

charge that "hearsay evidence such as that of A is of no value" *held* erroneous, as not stating what part of such evidence was hearsay, 57 C 63

charge that witness attempting to repeat what testatrix had said, might not have understood or remembered accurately, correct, 57 C 145

where judge, in questioning witness, has shown a disbelief in his credibility, he should caution jury to come to a decision in regard to it for themselves, 73 C 707

comment on testimony of young child who has talked over accident, 79 C 116

instructing jury that evidence in deposition no more credible than that given in court is proper, 79 C 348

——as to testimony of party in regard to unprofessional conduct of adversary's attorney, 80 C 531

indicating that maxim falsus in uno falsus in omnibus might apply, 80 C 538

ordinarily, jury's attention need not be called to consideration of intelligence, demeanor, or candor of witness, 90 C 625

can comment on witness' not answering proper question and point out the inferences that can be drawn, 91 C 316, 325

no error to charge in slander that, if one testified falsely in one matter, it could be considered in weighing other testimony, 92 C 237

stating that jury can disregard evidence as unworthy of belief is the same thing as stating the witness knowingly testified falsely, 92 C 237

correct to comment on cross-examination of witness imputing dishonesty, which was not followed by proof, 92 C 599

no error to charge that jury could consider removal of rubbish in street on day following accident as it affected credibility of witnesses, 96 C 1

charge that one witness might be deemed more truthful than a hundred, if made without qualification or explanation, erroneous, 97 C 477

court may point out that case turns largely upon veracity of parties, 104 C 121

concerning contradiction of witness' testimony in former trial, 111 C 261

weight to be given testimony of certain witnesses not necessarily to be included in absence of request, 113 C 464

——is incidental matter, failure to charge as to which is not ground of error, 113 C 464

failure to instruct jury that testimony given in another proceeding, transcript of which was admitted, was restricted to effect on credibility, and not to be taken in support of issues, was error, 116 C 290

error not ordinarily predicated on failure to charge specifically that if jury found witness testified falsely on one subject, it was within their province to disregard any or all of his testimony, 116 C 678

that jury would have to pass on credibility not only of plaintiff but "particularly of defendant and her daughter" not error, 120 C 622

reference to conflicting testimony of plaintiff as indicating willingness to testify falsely, though close to permissible bounds, not error in view of reiterated charge that it was for jury to pass on credibility, 120 C 688

as question as to whether with prompt treatment plaintiff's condition would have cleared up was vital, comment on experts changed testimony from that given on former trial justified, 121 C 324

in absence of request to give special charge as to weight to be given testimony of parties as distinct from that of witnesses in general, court not bound to give such instructions, 121 C 480

——same rule applies as to the failure to instruct jury as to failure of parties to call certain witnesses, 121 C 480

charge properly gave jury to understand that conflict between plaintiffs' testimony might be considered, in connection with other relevant evidence, but not that their testimony was conclusive against them, 123 C 128

"unless you find that C testified falsely your verdict would have to be for defendant," not erroneous under circumstances, 124 C 202

that jury should observe witnesses in and about the courtroom for their reactions when testimony comes in, to enable jury to draw inference which otherwise might be unavailable, went beyond limits of true rule, 126 C 258

relation of weight to be accorded opinion of lay witnesses as to testatrix' condition to extent of opportunity for observation, 126 C 295

application in charge of doctrine of falsus in uno, falsum in omnibus, 128 C 658

charge that conduct of parties "either in court elsewhere or upon the witness stand" to be considered, was correct and appropriate, 129 C 62

——words "in court elsewhere" to be construed as meaning "elsewhere in court," 129 C 62

§ 38. ——Witnesses in Criminal Cases; Testimony of Accused; of Accomplice

charge as to how testimony of accused should be considered by jury, not misleading, 63 C 392

charge that testimony of accused not that of disinterested witness, not harmful, 63 C 392

commenting on testimony of an accomplice, 72 C 321, 75 C 326, 84 C 152, 411

chemical analysis by an expert, 74 C 525

evidence of one on whom abortion has been committed, 76 C 342

comment that perhaps defendant will not testify is not a comment on neglect or refusal of accused to testify, 83 C 449

where one defendant gives evidence against another, it is not necessary to charge that it must be corroborated, 84 C 152

——the interest of witness at trial, not his participation in the murder, affects his credibility, 84 C 152

one of three accused turned state's evidence; *held* that while jury were properly instructed that his testimony should be corroborated, court could also comment on the fact that it was made after conviction and, therefore, with no hope of reward, 84 C 411

court should caution jury in criminal trial as to the limited effect of statements made before coroner by another accused, 88 C 164

——failure to request such caution is no reason for not giving it, 88 C 164

court is not bound to call attention to fact, that failure of accused to testify should not be taken against them, at least in absence of request, 90 C 127

——whether, if requested, court would be bound to comply, quaere, 90 C 127

where accused testified that an officer repeatedly struck him before he made his statement, a charge that statement should be disregarded is proper, 92 C 59

where state's attorney in argument comments on failure of accused to testify, 96 C 294

charge as to witness being accomplice, 98 C 454

comment that accused's interest in outcome of case should be considered in weighing his testimony, proper, 102 C 710

not improper to say that if certain testimony is believed it affords corroboration of accomplice sufficient in law, 103 C 138

charge as to testimony of chemical expert who has made test of liquor, 103 C 146

——as to corroboration of accomplices, telling jury that if certain testimony was believed it was sufficient corroboration in law, 103 C 147

failure of accused to testify cannot be commented on; but if he does take stand, his omission to explain or deny incriminating facts may be, 105 C 115

instructions to jury de accomplice testimony within reasonable discretion of trial court, 105 C 326

charge upheld as against claim that it did not properly caution jury as to conviction of accomplice who was witness, 108 C 53

——or charge as to his possible motives in testifying falsely, 108 C 53

statute de failure of accused to testify does not justify instruction that no inference against him may be drawn from such failure, 108 C 454, 109 C 490

charge that whether and to what extent corroboration of testimony of accomplice necessary is for jury, correct, 110 C 55

request that testimony of accomplice must be corroborated by evidence of clear and convincing character rightly refused, 119 C 29

court can comment on fact that accused failed to testify, 119 C 29

——statute prohibiting comment applies only to prosecuting attorneys, 119 C 29

court charged that jury should not convict upon testimony of accomplice unless corroborated by other evidence but that corroboration might consist of circumstances as well as direct evidence, 119 C 29

——accused could not complain; testimony of accomplice need not necessarily be corroborated, 119 C 29

consideration of fact that witness had motive for testifying as he did; accused appearing as witness no exception, 122 C 534

though court refused continuance of trial to permit wife of accused in criminal case to appear as witness in absence of showing that she might have attended trial, not error for court to charge that jury could take into account failure of party to produce available testimony, 126 C 257

that jury might consider failure of certain defendants to testify, not in violation of constitutional rights nor of statute that such failure shall not be commented upon to court or jury, 127 C 546

that function of statements made by witnesses before grand jury was not to prove truth of facts stated but to impeach credibility of witnesses, correct, 127 C 546

reference to facts as coming directly from mouths of witnesses could not lead jury to disregard great mass of documentary evidence, 127 C 592

where policeman testified as to conversation between accused he heard over dictaphone, court should have charged jury that if they found he had no independent recollection but was testifying from memory from a memo he had made, they should discard the testimony, 128 C 172

§ 39. ——Miscellaneous Civil Cases

error to charge jury to first consider case without defendant's testimony, 30 C 558

court not bound to charge that description in deed would make lot of different shape, 40 C 320

charge assuming as proved a point on which evidence conflicts, *held* error, 46 C 406

charge de effect to be given to alleged admissions of one party to record, *held* correct, 54 C 115

charge de accuracy of account books in evidence, not misleading, 57 C 478

error of judge in stating evidence *held* hardly likely to mislead jury, 64 C 567

charging jury as to evidence which they may consider, after argument based on excluded evidence, 68 C 560

where judge failed to charge jury, in sending it back to reconsider its verdict, as to certain evidence and claims of defendant, verdict for plaintiff *held* erroneous, 71 C 1

may state opinion as to whether newspaper is within statute as to publishing obscene literature, 73 C 18

commenting on evidence of weakened mind as related to testamentary capacity, 73 C 468

need not call attention to specific evidence for and against certain claim, 76 C 135

——in case of negligence, 77 C 295

charge that, if jury believe testimony as to execution of assignment and its bona fide character, they "should find" it valid, upheld, 76 C 229

the expression of the court's opinoin on certain evidence is within its discretion; dangerous character of certain work, 82 C 519

comment that it is difficult to prove rate of speed, good, 82 C 539

can state that historical works are of little importance if the deeds, which are their source, are already in evidence, 82 C 653

comment that defendant was unable to pay over money, allowed to stand, 83 C 449

charge *held* to have correctly stated effect of admissions and the application of judgment file and execution in former suit, 88 C 369

no harm if judge says that, so far as he can recall, there was no evidence on a certain subject, but that, if he is wrong, jury will correct him, 88 C 656

stating that a fact is admitted, proper where adverse party testified to it, 89 C 238

charge cannot state A is an indorser if it appears that he is only a maker, 90 C 252

in recalling and commenting on evidence, court *held* not to have acted unfairly or partially; jury returned for reconsideration, 90 C 262

can call jury's attention to claims pro and con based on fact that testatrix wrote will herself, 91 C 388

comment on facts *held* not to have misled jury, 91 C 542

incorrect to charge that jury take evidence by plaintiff, even though the defendant offered no evidence, 92 C 427

consideration suggested to the jury that might affect the credibility of plaintiff's claims *held* to be proper, 93 C 598

charge containing caution as to carefully scrutinizing evidence de declarations of testator *held* correct, 96 C 383

to refer to letters as an acknowledgment of a debt *held* error, 97 C 179

statement that jury would "probably consider" various bits of evidence *held* not erroneous, 97 C 713

discretion of court whether to comment on declaration of deceased persons, 99 C 475

caution to jury as to testimony of medical experts attributing injury to earlier fall upheld, 100 C 65

it may be error to single out testimony of one witness for undue emphasis, 100 C 394

——but not necessarily so where use of words "plaintiff's whole story" refers to his whole case, 100 C 394

it may be essential to recite testimony of party and his claims from it, 100 C 560

various comments as to plaintiff's claimed loss of earning capacity due to injury and the lack of proof considered, 100 C 615

exaggerated statement that it was "totally dark" at place of accident *held* harmless, 102 C 162

jury should be cautioned as to weight of statements in certificate of death by medical examiner that it was suicide, 102 C 482

court may remark that certain evidence was uncontradicted, 102 C 634

statement that certain evidence was of small significance not error, 103 C 648

jury should be cautioned that weight of answer to hypothetical question depends upon proof and completeness of facts, 105 C 436

charge that certain facts if proved would "warrant jury probably in finding," equivlent to charge that they might find the facts, 106 C 119

charge stating certain claims of facts proven and adding "this being so" certain duty rested on defendant, in effect directed jury that the claim was proven, 106 C 302

error, if charge assumes as true the claim of one party on a contested issue of fact, 106 C 302

remark that one of two defendants must have been negligent, *held* proper, 106 C 447

judge may illustrate by putting hypothetical cases, but not by reciting facts of an actual occurrence, 107 C 17

statement that "it appears in evidence" that premises had been vacant certain time, where that was in dispute, *held* erroneous, 107 C 68

——where fact is undisputed, court may regard it as proven, 107 C 68

expression of disapproval of plaintiff's conduct in representing both parties in real estate deal, *held* prejudicial, 107 C 242

comments of court on facts *held* within rule that where necessary to guide jury court should express its opinion on facts, 108 C 117

——right and duty of court to comment on facts, 108 C 124

in will contest, that question of proper execution of will would present little difficulty, sustained, 111 C 257

careful scrutiny of evidence in support of claim against estate of decedent, 112 C 521

comment that from mere evidence of skidding, finding of insufficient brakes would not be justified, correct, 112 C 686

specific treatment of evidence desirable where plaintiff had pain and suffering not proximately caused by defendant's negligence, 113 C 145

that there was no serious difference between plaintiff's and defendant's figures on goods delivered *held* prejudicial to defendant, 113 C 223

reference to difficulty of man forty-one years old to take up new trade was reasonable comment, 113 C 457

where trial court charged that there was no evidence upon a certain vital issue and finding shows evidence on it was produced, charge was erroneous, 113 C 545

failure of memory did not require emphasis in charge where defendant was unconscious for hours after accident, 114 C 473

comments on evidence *held* not to exceed reasonable discretion of trial judge, 114 C 477

statement by court that under circumstances of case including failure of defendant to offer evidence it expected the jury would find negligence, *held* not error, 115 C 80

failure of court to refer to fact that driver of car had arm about girl passenger, *held* not ground of reversal, 115 C 117

charge that certain facts were conceded, *held* not error where they may have been conceded on argument and were not disputed, 115 C 356

court acted within discretion in refusing to set aside verdict because of newspaper article stating defendant was insured and in refraining to comment thereon in charge, 115 C 563

comments, while open to criticism because of length and detailed way in which evidence discussed, *held* not to have violated any rule of law or been abuse of discretion, 116 C 471

form of comment, largely in nature of queries, not objectionable, 116 C 471

comment that photographs did not show any injury to outside of front wheel where none of them showed outside of that wheel, not error, 116 C 471

——reasonable inference that if it had been damaged photo would have been offered to show it, 116 C 471

request that if jury accepted plaintiff's testimony they might infer there was defect in fuse, properly refused, 117 C 110

——from it they might understand they were to consider plaintiff's testimony apart from defendant's, 117 C 110

upon certain inference plaintiff asked jury to draw, well within court's discretion, 117 C 665

evidence by plaintiff that she suffered certain pains was admitted upon promise that relation to accident would be later established which was not done; *held* not so material element in case as to require court to charge concerning it without request, 117 C 689

——motion to strike out would have been appropriate procedure, 117 C 689

relevant to question whether driver of truck was employee of other defendant, did not go beyond permissible limit, 117 C 698

with reference to plaintiff's testimony and whether she slipped on ice as alleged, or fell by reason of some other defect, *held* argumentative and unduly favorable to defendant, 118 C 334

——same as to testimony of plaintiff's witness as to location of ice on which plaintiff slipped, 118 C 334

as to defendant's car striking plaintiff, statement or testimony of witness substantially accurate, 118 C 431

statement that plaintiff claimed that "admittedly" the decedent was in clear view of defendant's driver not prejudicial; was not an instruction, 119 C 277

counsel entitled to claim inference from failure of defendant to obtain physical examination of plaintiff; no further comment by court necessary than that no duty rested on defendant to do so, 119 C 310

within discretion to point out that testimony of defendant's driver should be scrutinized in light of physical facts, 119 C 591

malpractice; finding supported charge that medical experts, except S, agreed that it was immaterial to plaintiff's sickness that defendant did not see her for six weeks after her delivery, 121 C 324

where it is claimed that active operation of negligence of one is such supervening cause as to prevent antecedent negligence of another from being substantial factor, statement to jury of general rule without application to particular facts will not be sufficient, 121 C 432

jury should have been told that if driver of unknown car intended to change direction at intersection, statute de giving signal would apply automatically, and if his negligence in not giving it was substantial factor in causing injury to defendant's guest, rather than defendant's disregard, verdict should be for latter, 121 C 506

——effect of charge as given was merely to inform jury there was such a statute, and leave its application to them, 121 C 506

court in error in informing jury that driver of bus had knowledge of condition of gutter where plaintiff alighted, as this was directly in controversy, 122 C 236

bicycle rider rode to left of center of intersection and turned left into street; court in error in stating that his negligenec was "condition only" and not proximate cause of accident when it continued down to moment of impact, 122 C 611

pedestrian struck by automobile; court referred sufficiently to facts bearing on contributory negligence, 122 C 615

reckless driving; response to jury's question that if car of accused was not under control immediately before or during attempt to pass truck this was evidence of, erroneous and prejudicial, 124 C 266

——defendant entitled to instruction that if truck veered to left creating emergency, and that he did nothing before or after which was reckless, he was entitled to acquittal, 124 C 266

action of malicious prosecution for procuring arrest of plaintiff for trespass; charge asserting that permission had been refused for entry erroneous when this was contested, 124 C 310

——same as to another part of charge which assumed such consent, 124 C 310

——error not cured by stating in closing that question was one of fact, 124 C 310

discretion in trial court as to extent to which it should comment on evidence, not abused, 126 C 294

statement had effect of harmfully detracting from appreciation by jury of special weight attending physician's own position and standing as expert on question of testamentary capacity; also that attaching to attending physicians generally, 126 C 295

court sustained in only briefly reviewing claims of proof in long will case which had been exhaustively reviewed by counsel, 126 C 303

mistake in date of will when executed and its subsequent correction as bearing upon testamentary capacity, 128 C 376

where record did not say that defendants contested agency and they made no attempt to correct it, no error in statements in charge that alleged assault was in scope of employment, 128 C 654

where real issue was whether assault was without justifiable excuse and court made this issue depend on location of assault, this being a matter of credibility, this was error, and, coming at end of charge, was reversible error, 128 C 654

miscellaneous comments, in action by passenger against driver, not error, 129 C 65, 66

§ 40. ——Miscellaneous Criminal Cases

may give opinion as to violation of law involved, 73 C 18

court's comment on evidence of self-defense, upheld, 83 C 160

comment on good moral character of accused, 83 C 598

charge that, if certain evidence is believed, it warrants a finding that stolen goods were received, is not error; does not remove question of guilty knowledge of accused, 84 C 411

——inferring knowledge of facts from other facts, 84 C 411, 416

charge not erroneous which does not tell jury how to find the facts though indicating an opinion adverse to accused, 87 C 6

can say that opinion evidence based on facts not proven is of little weight, 87 C 6

where court did not make comments of its own, only stated claims of the State, and

inadvertently omitted a word or two, charge *held* not argumentative, 95 C 187

no error to refuse to charge that there has been a withholding of evidence where witness is in court and available to both sides, 96 C 428

charge that if certain facts found "intent seems to me to follow as matter of course" upheld, 102 C 711

——so to say that much of evidence had little to do with main issue, 102 C 711

effect of withdrawal of exhibit marked for identification on failure to connect it with accused and of judge's caution as to it, 103 C 455

duty of judge in murder case to comment on evidence though weakness of defense is thereby disclosed, 103 C 456

——to say that in his opinion there is no ground for finding of manslaughter, 103 C 485

when "impeaching" testimony referred to in charge, it should be adequately defined and effect stated, 105 C 757

where commission of crime is not in dispute and only question is who did it, court may so remark, 105 C 757

court sustained in cautioning jury not to give too much weight to evidence read to them at their request, 108 C 53

remark of judge in denying motion to strike out answer to question that it was not pleasing to counsel for accused *held* not prejudicial, 108 C 454

reference to evidence concerning accused's claim of lack of motive sufficient, 110 C 55

cautions as to defense of alibi *held* not improper, 110 C 410

dying declarations; where court pointed out that certain inadmissible statements should be disregarded, accused has no complaint, 113 C 209

expressing opinion that State had produced strong evidence in support of its charge within court's discretion, 113 C 247

indecent assault; judge's comment on jury's duty in view of evidence of guilt justified, 115 C 672

comment on contradictory nature of testimony of police officers and statement of accused not harmful to latter, 119 C 440

statement of accused "give me a break," etc., interpreted as admission, if believed, not unreasonable comment, 119 C 441

forgery; court in error in not calling jury's attention to fact that no attempt was made to imitate handwriting, as bearing on intent, 119 C 464

charge that there was no evidence which would excuse, justify, mitigate or extenuate the shooting, taken in connection with rest of charge, not prejudicial, 122 C 535

charge *held* to have admirably fulfilled functions without clouding issue with discussion of circumstances and evidence, 122 C 607

court properly refused to charge that any circumstances susceptible of any inference contrary to guilt must be disregarded, 124 C 554

——it would prevent jury from drawing reasonable inference from circumstantial evidence, 124 C 554

conspiracy to defraud city; peculiarly necessary for court to comment where trial was very long and facts complicated, 127 C 545

charge de evidence of same method of operation running through numerous transactions as bearing on question of single conspiracy correct, 127 C 546

§ 41. Requests to Charge and Objections

§ 42. ——In General; Form of Request

court may disregard request to charge, if the whole request is not correct, 23 C 54, 37 C 423

may comply with request so far as correct, 23 C 55

court not bound to dissect abstract request, 31 C 205

duty to charge on request that if jury find certain facts, verdict must be for party requesting charge, 32 C 81

if request be proper on certain detailed facts, insertion of other facts does not affect request, when, 35 C 371

request should specify count to which it applies, 37 C 423

requests to charge should be so framed as to be unobjectionable, 49 C 138

——otherwise new trial will not ordinarily be granted for refusal to comply with request, 49 C 138

——but new trial will be granted if request relates to important point and court omits all reference to the point, 49 C 138

refusal to charge that each juror must act uninfluenced by opinion of others, no error, 49 C 386

requests must be made in conformity with rule in Practice Act; request made after charge is too late and point cannot be considered on appeal, 49 C 468

refusal to give written charge upon written requests, was formerly ground for new trial, 50 C 33

discretion of court to refuse to receive, when not offered in accordance with rules, 71 C 61, 86 C 22

request assuming facts improperly should be refused, 72 C 306, 80 C 378, 83 C 64

it is not for the attorneys to frame the charge, 73 C 18

court should refuse request unduly emphasizing certain elements in case, or argumentative, 74 C 525, 82 C 24, 90 C 701

requests must not be too general, 74 C 555
failure to charge in language of oral claims when no written requests are made, not assignable as error, 76 C 342
if objectionable in form or substance, should be disregarded, 77 C 150, 79 C 271
should be refused if disparaging witness or requiring dissection, 77 C 462
judge should be cautious about following entire request, 77 C 578
where charge is sufficient in all respects, requests may be disregarded, 79 C 271, 81 C 407, 83 C 208, 597, 85 C 19, 88 C 214, 89 C 117
——so one in effect instructing jury how to find the facts, 79 C 463
——or one striving to make case turn on one point where situation is complicated, 80 C 260, 83 C 261
request containing mere abstract claims of law should be refused, 80 C 378
no error to refuse a request to charge presented as a unit, some of which is erroneous, 81 C 626, 86 C 22
couched in language drawn from opinion of Supreme Court are seldom adapted for use in instructing a jury, 81 C 626, 82 C 199
purpose of requests, 82 C 27
harmless to charge that if a fact was found, a certain result would follow instead of a request that assumed that fact, 82 C 116
a request correct in a limited but not in a broader sense, is properly refused, 82 C 624
judge's belief that jury is familiar with law no excuse for refusal to charge as requested, 83 C 174
not bound to consider oral requests, 83 C 208
request can be refused that does not correctly state law applicable to the facts, 83 C 261
discretionary with court to accept written requests after argument begun, 84 C 2
can refuse to charge as requested if some of the requests are bad law, 85 C 438
request ignoring necessary element such as defendant's negligence, properly refused, 85 C 579
refusal to charge where request contains incorrect proposition of law with correct, is not error, 86 C 22, 23
requests to charge should state only plain propositions of law, 86 C 23
——these may be based on stated assumption of facts warranted by the evidence; each proposition should be in separate paragraph, 86 C 23
need not notice specifically request to charge, 88 C 494
no error to fail to refer to a point not asked for in the request, 89 C 343
requests too indefinite, or mere statements of law apart from facts of case, properly refused, 97 C 226
in criminal case, request that, if jury find certain facts proven, their verdict should be not guilty, improper, 97 C 463
must be specific and separate; omnibus request calling for entire charge not proper, 98 C 500
appellant cannot complain of instruction in exact accord with request, 98 C 524
request to charge as to concurrent negligence omitting element of proximate cause properly refused, 101 C 495
requests to charge, if granted, should be incorporated in the body of the charge, 103 C 237
request must embody all essential facts bearing on point involved, 103 C 678
must be filed when instructions on particular points are desired, 104 C 528
must appear in finding on appeal, 106 C 167
request only partially stating law and ending with demand for verdict should be refused, 107 C 91
requests must be correct in form and substance and directly applicable to evidence; if so they should be substantially given, 107 C 681
oral requests to charge may be refused in reasonable exercise of discretion, 108 C 544
request not containing propositions of law but largely relations of fact need not be granted, 109 C 484
each request shall contain single proposition of law clearly and concisely stated, 109 C 616
request to charge stating evidence, or facts claimed to have been proven, with instruction that if proven negligence would be established, is improper, 109 C 621
requests should each contain single proposition of law applicable to facts of case; judge should then give such further explanation as facts require, 111 C 253
——purpose of requests, 111 C 258
——extent of recital of conflicting claims varies in different cases, and usually requires statement of opposing claims, 111 C 258
request containing assumption of fact likely to mislead jury properly refused, 112 C 479
though request to charge was not filed before argument as required by rules, a deficiency in charge was reversible error, 113 C 181
self-defense; request leaving out qualifications properly refused, 113 C 209
an inadequate statement of law as applicable to facts, may be properly refused, 113 C 218
true purpose of; forty-five requests covering every aspect of case is practice to be discountenanced, 113 C 457
where requests not filed in accordance with rule, trial court may disregard them, 114 C 345
——but where delay is due to accident or other cause not involving gross or wilful

neglect, court may well exercise discretion to receive them, 114 C 345

request for charge should not be argumentative but each request should contain single proposition clearly and concisely stated with citations, 116 C 392

requests refused were repetitious and calculated to give impression harmful to party making them, 118 C 473

where no request to charge, Supreme Court need not take cognizance of claim of omission in charge, 118 C 554

if defendant desired charge on particular feature of case he should have asked for it, 119 C 277

request stating certain claims of fact and that if jury found them proved, plaintiff could not recover, *held* improper, 119 C 279

may be denied where argumentative, 119 C 464

each request should contain a single proposition of law, clearly and concisely stated, and a citation of authority, 119 C 555

if plaintiffs desired specific reference to be made to defendant's duty as applied to particular circumstances they should have filed request to charge, 120 C 688

requests violated rule that each should contain single proposition of law clearly and concisely stated, 121 C 367

claims that court should have given special instructions come too late in view of failure to request them; claim first made in arguing motion to set aside verdict, 121 C 480

request page and half long, in length and complexity was in violation of rules, 121 C 513

requests to charge should be filed before beginning of argument; reason for requirement; refusal to relax rule proper under circumstances, 126 C 320

duty of court to charge concerning statutes having reasonable application to claims of proof even in absence of request, 127 C 159

requests to charge should contain single proposition of law clearly and concisely stated, with citation of authority upon which such suggestion is based, 128 C 275

——if request is granted, court applies the proposition of law to the facts of the case, 128 C 275

request that court charge as to right of driver of automobile to assume that others would exercise proper care *held* sufficient, though omitting qualification, until he saw or should have seen that they were not going to do so, 128 C 441

if plaintiff desired charge de contributory negligence beyond customary one he should have requested it, 129 C 529

§ 43. ——Substantial Compliance in Charge

charge need not follow precise language of request, 67 C 40, 73 C 47, 86 C 335, 415, 89 C 117, 92 C 58

it is sufficient to comply substantially with requests, 73 C 47, 74 C 525, 79 C 659, 80 C 88, 82 C 24, 653, 95 C 231

to substantially, fully, and clearly comply with requests is sufficient, 81 C 268, 82 C 653

requests correct and adapted to issue should be incorporated in charge, at least in substance, 81 C 403, 83 C 597

appellant cannot complain if the substance of his requests is given, 82 C 24

proper to refuse misleading and confusing requests if substance is given, 82 C 213

request that one plaintiff could not recover if injury was sole result of other's negligence is complied with in charge that states that neither could recover without proof of defendant's negligence, 83 C 219

no error not to adopt phraseology of request, if point is otherwise covered, 85 C 359, 88 C 136, 95 C 231

request to charge that accused be acquitted if he is insane, is complied with by saying there would be no crime if that were so, 87 C 5

in homicide, request as to deliberate and premeditated purpose sufficiently complied with, 87 C 5

need not charge in language of request but must give a clear understanding of issues under the pleadings and evidence, 90 C 701

court does not have to use phraseology of counsel in stating law, 92 C 59, 93 C 382

if charge is clear, language of request need not be used, 92 C 608

charge need not be as requested if adequate, 93 C 382

preferable for court to cover subject matter in its own way rather than follow requests literally, 97 C 282, 713, 99 C 417

court not bound to follow request to charge exactly; if charge is proper and adequate, that is sufficient, 101 C 439, 105 C 436, 113 C 145, 574, 114 C 590

sufficient if charge is correct and adequate upon the matters included in request, 105 C 436

court not bound to use language of requests; enough if instructions are correct and adequate, 119 C 553

court under no duty to charge in language of requests, 125 C 15, 566

§ 44. ——Requests on Disputed Facts or Irrelevant to Issues or Evidence

charge requested must be relevant to issue and evidence, 25 C 590, 31 C 145

not bound to comply with request assuming facts not proved or conceded, 40 C 321

charge may be refused respecting an element eliminated from the case, 82 C 24

request passing on controverted facts properly refused, 82 C 484, 485, 83 C 208, 86 C 23, 335, 93 C 252
requests not relevant to the claims of the parties or the evidence, refused, 82 C 623, 83 C 59, 88 C 164
request properly refused because it set up an agreement other than that sued on, 83 C 65
no error not to instruct regarding a clause that any difference should be submitted to arbitration if reference to this fact did not appear in the request to charge or pleading, 84 C 464
request asking court to pass on facts or containing hypothetical question unsupported by evidence, is properly refused, 85 C 20, 86 C 335
can refuse a request on which no evidence has been submitted, 85 C 579, 87 C 618
pleadings must furnish foundation for the request, 86 C 293
request inapplicable to issue may be refused, 88 C 214, 90 C 41, 58
court can refuse request on which there is no evidence, 88 C 656
no error to refuse to charge upon unwarranted assumptions respecting nature and effect of evidence, 90 C 58
request that is inapplicable can be refused; where pleadings furnish no basis, 90 C 625
request to charge as to issue not raised, properly refused, 93 C 385
requests of abstract propositions without relevant facts or claims improper, 98 C 524
should be refused, when they assume existence of disputed facts, 101 C 340, 103 C 267, 520, 104 C 83
request properly refused if it assumes facts conceded not to exist; or assumes some but not all of relevant facts in evidence, 103 C 521
though request to charge is correct statement of law, refusal is not reversible error unless record shows it applicable to situation before the court, 105 C 453
though contributory negligence is not in issue, failure to grant request that it be not considered by jury, is not error, 108 C 191
embodying only part of material facts and including immaterial fact properly refused, 109 C 87
request to charge as to duty of trolley company to have sufficient headlights properly refused where no evidence of any failure to do so, 109 C 222
on abandonment of conflict by accused properly refused, where accused did not do substantial act showing abandonment, 113 C 209
properly refused where claims of proof laid no basis for it, 119 C 262
refusal to give requests to charge which were outside issues submitted in equitable action by interrogatories to jury, sustained, 124 C 569

§ 45. ——Reading or Explaining Requests to Jury

jury should be clearly informed whether requests read aloud are for their guidance, 71 C 1
judge need not read, nor inform jury that he has received, request, 73 C 552, 88 C 494
court need not define to jury the language used in the request, 86 C 302
judge need not read request to charge; reading inapplicable request harmless, 87 C 691
court's conception of a case need not be supplemented by reading requests; if they are read, they should be inserted in connection with their proper subjects or placed at end, 95 C 640
in reading request judge should make it clear that it is a statement of law binding on jury, 103 C 248
improper but not reversible error to read requests verbatim and then comment upon them, 110 C 255

CHARITABLE USES

See Charities § 4

CHARITIES

§ 1. In General
2. Beneficiaries; Certainty; Capacity to Take
3. Trustees; Power to Select Beneficiaries and Purposes
4. Purposes and Uses; What Constitutes Charitable Use
5. Doctrine of Approximation; Cy Pres
6. Liability for Torts of Agents and Servants

Note: Cases involving perpetuities and accumulations are listed under Perpetuities § 4, and those involving exemption from taxation under Taxation § 6.

§ 1 Charities

See also Church and Ecclesiastical Societies

§ 1. In General

land conveyed to church society's committee and their successors passes to the successors, 2 R 298

diversion of fund to another charity illegal, 3 D 450

division of church lands between different societies, 4 D 360

diversion of fund from charitable use by return to donor illegal, 12 C 113

revocation of "all devises beneficial to hospital" includes one to outgoing patients, 45 C 62

bequest here to New York charitable company, *held* not affected by New York law de amount of bequest it was permitted to take, 47 C 593

gifts to public charities are highly favored by the law and court of chancery will uphold them if it can possibly be done, 51 C 352, 60 C 324, 63 C 126, 67 C 243, 68 C 532, 116 C 347

——if two constructions are open, the one making the trust valid and operative is preferred, 63 C 126

——to sustain bequest it is allowable to transpose words or limitations, when, 63 C 126

gift to wife of use of entire estate for life; by codicil a sum to two charitable societies; *held* latter not subject to life estate, 53 C 489

charitable bequest will not be allowed to fail because beneficiaries delay in asking their rights, 54 C 345

bequest of "a sufficient sum to constitute" seven persons named "life members of the American Bible Society and as a memorial of the deceased"; *held* a bequest to the Society of a sum sufficient for the purpose stated, 57 C 24

——bequest not affected by death of any of the persons named before testatrix, 57 C 24

——nor by refusal of others to accept life membership, 57 C 24

validity of a public charitable trust is unaffected by fact that two or more such uses may be made dependent upon one fund, 57 C 148

——even where the testator has not made an absolute rule for division, 57 C 148

——if he has given trustee power to apportion from time to time at his discretion, 57 C 148

——trustees *held* to have discretion de beneficiaries and amount to be applied, 57 C 148

bequest to poor of church society *held* not invalidated because witnessed by members of such society, 57 C 275

not necessary to validity of charitable bequest that any member of a class benefited be in existence at testator's death, 57 C 276

court will take judicial notice that the poor will always be among men, 57 C 276

charitable bequest on condition that certain land should be given free of cost, *held* to mean that title should be conveyed to the trustees within twenty years, 63 C 125

——conveyance of site *held* not a condition precedent to bequest taking effect, 63 C 125

successive objects of bounty may be pointed out, where there is only one trust and one use; one trust may be limited on another, 67 C 555

provision for care of grave *held* obligatory during life of trust only, 73 C 58

motive which causes valid charitable trust to be established, of no consequence, 74 C 588

while equity favors trusts for charities, it will not turn an imperfect gift into a declaration of trust, 82 C 505

a violation of a charitable trust will not make it revert to heirs unless there is a provision for such reversion; court will correct abuses, 85 C 309

provisions for carrying out charitable trust will not be construed as condition unless that intent clearly appears, 85 C 315

a charitable bequest is in the nature of a trust, 90 C 592

no distinction between gift to charitable corporation and to it for its "general uses and purposes," 90 C 592

gift to one charity *held* not to exclude gift to another, 90 C 593

charitable trust to be liberally construed, 93 C 344, 99 C 30

that language is so ambiguous as to call for judicial interpretation does not make it invalid, 93 C 345

meaning of "support" in a charitable trust, 93 C 345

gift to church society of land for church, parsonage and shed, with gift over to state association if doctrine of denomination be departed from creates a trust, 98 C 677

——if no express reverter, breach of condition will not forfeit estate but equity will interfere to enforce it, 98 C 677

where property held by ecclesiastical society passes to church, estates will not merge so as to prevent sale by court under statute as to charitable trust, 98 C 677

——decree in such a case, 98 C 688

equity will not permit a valid trust to be destroyed, 98 C 682

——nor force a merger of titles contrary to donor's intent and interest, 98 C 682

land held in trust for charitable use, may be sold by order of court, when, 98 C 684

——but judgment should provide that avails be used for trust purposes, 98 C 688
——and subject to same conditions and restrictions as original gift, 98 C 688
provision for reversion in deed of trust for a charity is not void as unreasonable restraint on alienation, 99 C 39
power of Superior Court over administration of trusts for charitable uses, 100 C 5
gift to New York charitable organization to hold in trust and use income for one of its chartered purposes *held* not to set up special trust, 100 C 513
——and organization not accountable to Probate Court in Connecticut, 100 C 513
——nature of such gift, 100 C 513
gift of fund if five designated societies would within five years of death of testator acquire and establish home for destitute upheld, 101 C 518
——if one society has disbanded other four may act, 101 C 518
——to buy house and pay $2000 on price dedicated for home within three days of end of five-year period suffices, though home not ready for use for three months after, 101 C 518
——that it could not be sustained unless gift is received, of no consequence, 101 C 518
——wisdom of provision not for court's determination, 101 C 518
when charitable trust chartered by Legislature, wills of donors, made in pursuance of general plan, relevant to construction of charter, 102 C 410
charter of charity to be liberally construed, 102 C 410
charter of Loomis Institute construed; *held* to require education facilities for girls as well as boys, 102 C 410
attorney-general may enforce charity by suit for injunctive relief, 102 C 410
as regards accounting by executors of testator establishing charitable trust, trustees or attorney-general proper representatives of beneficiaries, 106 C 582
——they, and not teachers falling within description, proper parties to appeal from probate, 106 C 582
unascertainable beneficiaries must be represented in litigation by trustees or attorney-general, 106 C 582
general characteristics of charitable trust, 106 C 582
charitable trusts are purely creations of the statute, 106 C 590
trust need not be restricted to any period of time; reasonable accumulation of income permitted where beneficiary is a charity, 112 C 216
——hence gift to accumulate and go to town if bridge built in twenty-five years is good, 112 C 216
——as is also gift over to another charity, if condition not met, 112 C 216
provision for appropriation from funds of as much as association "now appropriates," means as it appropriated at execution of will, 113 C 206
charitable trusts are highly favored and every reasonable intendment is to be made to sustain and make them effective, 116 C 347
law treats charitable trusts on broader basis than gifts of private nature, 120 C 32
——construes them with utmost liberality to carry out charitable purposes of donor, 120 C 32
gift of income to church, but if it should dissolve or abandon purpose for which it was created, then over, did not lapse where church was merged with others in one united church and technically dissolved, 120 C 27
underlying intent of will as determining meaning of particular words; principle applies with added force to trusts for charitable uses; to be sustained if possible, 123 C 550
charitable trusts are treated by law with utmost liberality in order to carry out charitable purposes of donors, 125 C 131
charitable trust not terminated by mere delay in executing it or by temporary inability to fulfill its purpose, 126 C 286
vote of cemetery corporation that the legacy be "declined" did not terminate trust, where five years later it rescinded this vote and voted "to accept the legacy," 126 C 286
decisions concerning charitable trusts reviewed, 126 C 665
Legislature can tax all charitable trusts or only such of them as are characterized by distinguishing elements, 126 C 673

§ 2. Beneficiaries; Certainty; Capacity to Take

who can take under statute de charitable uses, 2 R 298, 6 C 293, 11 C 60, 23 C 34
devise "to the church" is not a devise to the congregation, 2 C 287
devise in trust to individuals composing voluntary association, *held* void, 6 C 293
——so also devise in trust to unincorporated society, 6 C 293, 15 C 274
devise for charitable trust, when sustained in equity, 6 C 298
what evidence admissible to identify devisees of charitable trust, 15 C 274, 16 C 291
devise to school not in existence, *held* void, 15 C 275
——though once carried on by existing corporation, 15 C 275
presumption where several societies answer description, and some are incapable to take, 15 C 294
"heathen" embraces Indians, 15 C 296

indiscriminate use of words "church" and "parish," 16 C 291
parol evidence admissible to show which church society intended by testator, 16 C 291
devise to voluntary association for public charity will not fail though incorrect name given devisee, 17 C 181
bequest to "pious indigent young men," *held* void for uncertainty, 22 C 32
"to episcopal society in H" *held* good to the only episcopal church in H, 36 C 365
certainty in persons to be benefited required, 44 C 60
legacy "to American and Foreign Bible Society"; evidence that "American Bible Society" intended, inadmissible, 45 C 61
no corporation precisely designated; circumstances clearly indicating which was meant, *held* sufficient, 45 C 62
——evidence dehors the will, *held* admissible, 45 C 327
bequest to build a "boys' reformatory" *held* void for uncertainty, 49 C 34
——bequest to "most deserving poor" of the city of New Britain, *held* void, 49 C 34
——especially as power to declare precise purpose was not conferred, 49 C 35
if charity does not fix itself on a particular object but is general and indefinite, and no plan is prescribed and no discretion given for selection of beneficiaries, it is void, 50 C 501
gift over of "income to be devoted to education of freedmen" and to be paid to the proper officers of the freedmen's association; that testator told scrivener of a particular association to which it was to be paid, *held* inadmissible, 50 C 501
——trustee could not appropriate income for the education of freedmen as a class, 50 C 501
——trust then became a gift upon trust, with no provision as to who should take the benefit, 50 C 502
——trust could not be carried out, and fund became intestate estate, 50 C 502
what necessary to render parol evidence admissible in cases of ambiguity, 50 C 501
beneficiaries of charitable bequest *held* sufficiently described, 51 C 352
beneficiaries in public charity are necessarily described in general terms, 51 C 377
uncertainty in beneficiaries is made certain when, 51 C 379
——id certum est quod certum redii potest, 51 C 379
"to indigent unmarried Protestant females over 18 years of age, residents of B," *held* a public charity, 52 C 412
——not void for uncertainty, 52 C 412
——meaning of "Protestant," 52 C 418
to trustee, to be held until charter was obtained incorporating charitable institution, *held* legal, 52 C 412
bequest for benefit of the "worthy, deserving poor, white, American, Protestant, Democratic widows and orphans, residing in B," *held* not void for uncertainty, 53 C 489
a word having a meaning sharply defined will support a charitable bequest, 53 C 493
——"white," as applied to persons, 53 C 493
bequest in trust for aiding indigent, needy and meritorious widows and orphans of W, to prevent their becoming chargeable to town, *held* valid, 54 C 21
in trust to aid indigent young men of M in fitting for the Evangelical ministry, *held* not void for uncertainty, 54 C 342
bequest to second ecclesiastical society so long as preaching was "kept up as at present," *held* not void for uncertainty, 55 C 166
——by this was meant continuation of the religious services of the same denomination, 55 C 166
——the society meant was the one which the testator attended, 55 C 166
bequest for benefit of some "poor, deserving Jewish family" etc. *held* valid, 57 C 147
trustees *held* to have discretion as to beneficiaries and amount to be applied, 57 C 148
bequest of income in trust for the poor of the Protestant Episcopal Society of B, where but one, *held* to be the one intended, though name was Trinity Parish, 57 C 275
——beneficiaries *held* sufficiently identified, 57 C 275
——rector *held* to have power to select the individual beneficiaries, 57 C 275
——if parish neglects to select beneficiaries, court will substitute another trustee, 57 C 275
not necessary to validity of charitable bequest that any member of a class benefited be in existence at testator's death, 57 C 275
bequest in trust "for the purchase of books, for the Young Men's Institute or any public library which may from time to time exist in said city"; *held* that trustee was not limited to buying books for Institute, 60 C 32
——but had discretion to apply legacies to a free public library since established, 60 C 32
charitable gift in trust to establish the "Gilbert Home"; language *held* to describe sufficiently the class benefited, 63 C 125
——and *held* also to give the trustees the "care and control" of the institution as well as of the fund, 63 C 125
——and that this control involved the power to select the individual beneficiaries, 63 C 125

bequest to the "poor" and to "Sunday school" of a certain church, *held* valid charitable gifts, 63 C 377

bequests to charitable societies incorrectly named will nevertheless go to those clearly intended, 63 C 377

particular form of trust yields to general intent; bequest to executor for maintaining free beds for female patients at State insane asylum, income to be used under his direction, is valid, 64 C 324

——if not possible to arrange, he should use income in some other way for female insane, 64 C 321

charitable bequests favored; gift to State for institution for idiots, 67 C 237

——certainty requisite; discretion of committee to whom income of trust for the worthy poor of a town is turned over, 68 C 527

"Second Congregational Church" sufficiently designates Second Congregational Society, 69 C 416

inaccurately named corporation entitled to legacy on proof that it was the intended legatee, 73 C 671

as between two churches each answering the description, what determines, 75 C 712

"missionary societies" do not include church, 78 C 534

capacity of corporation to take gift is not affected by past faults of administration, in absence of proceedings by State, founded on usurpation of ungranted franchises, 82 C 189

ecclesiastical society may take bequest, income of which is to be devoted in part to keeping up lot and cemetery and balance in maintaining church edifice, 82 C 189

will leaving property to support indigent insane *held* to refer to those who were poor but not paupers and to apply to their support only at Middletown or Norwich, 84 C 544

bequest to a charity miscalled a corporation, not fatal if legatee can be identified, 90 C 592

if incapacity of charitable institution to take cannot be cured, trustee should be appointed to carry charitable gift into effect, pursuant to statute of charitable uses, 90 C 592

gift to a charitable organization and to a specific institution maintained by it; both given effect, 90 C 592

trust is sufficient, if purpose of testator, objects of his benefaction, and means of determining class of beneficiaries, sufficiently appear, 93 C 344

trust for education of youths is a charitable trust; not indefinite as to objects or means of carrying in out if it did not provide for all details, but left some to trustee's discretion; liberally construed, 93 C 344

if income of trust is more than necessary for one student, it can be used for others, 93 C 345

that trust is open to more than one interpretation does not make it invalid, 93 C 345

"Ladies' Society of Stratford" *held* to mean "Women's Missionary Society of the Congregational Church of Stratford," 98 C 322

unincorporated or voluntary association may take testamentary gift of real or personal estate for charitable use, 98 C 323

gift of income to be used each year to fit out missionary boxes sufficiently definite, 98 C 323

gifts to charity not void for uncertainty, 100 C 513

——where for purpose of sending poor children to country, 100 C 513

——charter of trustee reviewed; *held* to give power to perform trust, 100 C 513

——and to give power to select individual beneficiaries out of designated class, 100 C 513

incapacity of corporation to accept trust may be cured by later law, 100 C 518

trust to establish home for white Protestant female teachers in particular county is public charitable trust, 106 C 582

——though class to be benefited is described in general terms and membership is fluctuating and uncertain, 106 C 582

trust for such inhabitants of two towns as shall associate together for public worship is too indefinite as to mode of selection and time to be valid, 109 C 529

bequest of permanent fund to educational association *held* not a trust, but a gift to be used for the corporate purposes, 113 C 200

——cannot be attacked for uncertainty in designation of uses and persons to be benefited, 113 C 200

trusts for support of religion are charitable and to be favored, 113 C 231

——object must be sufficiently indicated to bind conscience of trustees though beneficiaries are necessarily indefinite, 113 C 231

——designation of objects sufficient if trustees are given power of selection, 113 C 231

——gift of estate to trustee to be used for either home or foreign missions "trusting she will see that it goes where the need is greatest" upheld, 113 C 231

fact that at particular time there are no persons qualified to receive benefits of charitable bequest not necessarily reason for holding that it had failed, 116 C 347

——if no other disposition of income is provided it may be permitted to accumulate awaiting the finding of proper beneficiaries, 116 C 347

testator left fund for benefit of Baptist Sunday school under direction of pastor and superintendent; that church discontinued separate services and library was transferred to Episcopal Church, where teachers and pupils then attended, but there was no amalgamation of the two churches; *held*

——so long as possibility remained that Baptist Church might resume Sunday school it could not be held that bequest had failed, 116 C 347

——the use of the income for benefit of library deposited with Episcopal Church effectuated testator's intent as well as possible under situation, 116 C 347

——Superior Court has power to appoint other persons to direct expenditure, since there is no acting pastor and superintendent of Baptist Church, 116 C 347

gift, though a charity, made directly to class of beneficiaries generally defined, is too uncertain and there must be provision for selection of individuals, 120 C 83

gift of income of trust to organizations exempt from federal transfer and inheritance taxes construed to mean gifts which would be deducted in determining net amount of estate upon which such taxes are levied, 123 C 549

"institutions" given its broad meaning of established societies or corporations, 128 C 642

§ 3. Trustees; Power to Select Beneficiaries and Purposes

devise for public charity is not allowed to fail for want of trustee, 17 C 181, 30 C 113, 54 C 345, 57 C 285, 60 C 314, 101 C 528

provision for trustees from ecclesiastical society will be enforced, 23 C 43

devise to trustee for "any and all benevolent purposes he may see fit," *held* void, 44 C 60

——though trustee designate the purposes, 44 C 60

——test, not whether trustee may apply, but whether he is bound to, 44 C 60

provision authorizing executrix to disburse certain sum "to such worthy persons and objects as she may deem proper," *held* invalid, 53 C 242

bequest of income to trustees for certain charitable purposes named, with clause authorizing wife to dispose of portion of income "for such charitable purposes as she may deem proper"; *held* power of wife void for uncertainty in charitable purpose, 53 C 242

——not saved by written designation by widow of charitable purpose, 53 C 242

——could not take effect as gift to wife, 53 C 242

——had bequest been to her with authority thus to use it would be valid, 53 C 242

——could not be made a trust, as beneficiaries and payment were uncertain, 53 C 242

to selectmen for certain specified charities at their discretion; *held* selectmen were joint trustees, 53 C 489

——could select beneficiaries from classes specified, and apply either income or principal to their relief, 53 C 489

bequest in trust to aid "indigent young men of M in fitting for the Evangelical ministry" *held* not void for uncertainty, 54 C 342

——the trustees having power to decide upon the persons who meet the requirements, 54 C 353

charitable bequest will not be allowed to fail because trustee named declines, 54 C 342

——nor because beneficiaries delay in asking their rights, 54 C 345

where bequest was left to two charitable uses, *held* trustees might apportion sum to each, 57 C 147

——might also determine beneficiaries who fulfilled prescribed conditions, 57 C 147

bequest to church parish for relief of poor; if parish neglects such beneficiaries, court will substitute another trustee, 57 C 275

bequest in trust "for the purchase of books for Young Men's Institute or any public library which may from time to time exist in said city"; *held* that trustee was not limited to buying books for Young Men's Institute, 60 C 32

——but trustee had discretion to apply legacies to a free public library since established, 60 C 32

——objection that such use is to the trustees' own benefit, *held* of no force, 60 C 32

to city in trust; refusal of city to accept does not thereby defeat trust, 60 C 314

——court of equity will, if necessary, appoint a trustee to carry out the trust, 60 C 314

——action will ordinarily be left in such matters to Probate Court, under statute, 60 C 325

language of bequest, *held* not conditioned upon acceptance by the particular trustee named, 60 C 314

any individual of a class benefited by trust may apply for appointment of a trustee, 60 C 314

charitable gift in trust to establish the "Gilbert Home"; language *held* to describe sufficiently the class benefited, 63 C 125

——and *held* also to give the trustees the "care and control" of the institution, as well as of the fund, 63 C 125

——and that this control involved the power to select the individual beneficiaries, 63 C 125

——"means of educating" destitute children may be afforded either by schools or at the "Home," at discretion of trustee, 63 C 125

——and *held* that assistance to be furnished included food, shelter, clothing and medical attendance, 63 C 125

bequest to "poor" and "Sunday School" vested in deacons in trust, they being known as "trustees," 63 C 377

——but if otherwise equity would supply a trustee, 63 C 377

property of charitable trust cannot be reconveyed to grantor or donor by trustee without violating duty as trustee, 67 C 554

net income to be paid to committee to use it to aid the worthy poor of town; *held* class to be benefited sufficiently described and will gave committee discretion to select individual beneficiaries, 68 C 527

income to support pastor and for maintenance of church, paying it over in such manner as trustee might deem expedient, not void for uncertainty, 71 C 123

trust upheld, though trustee named cannot take; removal of limit on property corporation may hold between making and vesting of gift permits it to take gift above limit when made, 74 C 586

charitable organization may take a gift "in trust" for its objects without qualifying as trustee; that it has noncharitable purpose disregarded; inexpediency of purpose will not be considered, 74 C 586

trust funds for indigent persons; power of trustee to apply the same at either Middletown or Norwich, 84 C 544

charitable trusts will not fail from improper acts of trustee unless they so provide, 85 C 309

——court will restore gift to its original and proper purpose, 85 C 309

charitable bequest, while not a trust, will not fail for want of a trustee; courts will see it administered, 90 C 592

——if donee is unable to take legally, court will appoint trustee to hold fund, 90 C 592

if income of a charitable trust is more than needed to educate a student, it can be used for education of others, 93 C 345

details of administration may be left to trustee, 93 C 345

charter of trustee reviewed; *held* to give power to perform trust, 100 C 513

——and to give power to select individual beneficiaries out of designated class, 100 C 513

financial considerations no ground for radical departure from purposes of trust, 102 C 410

discretion of trustees of charity defined and limited, 102 C 410

trustees of corporation do not succeed to visitorial powers of founder; they are governed solely by terms of charter, 102 C 410

visitorial powers over charitable institutions and nature of control exercised by court, 102 C 421

gift of residue to D to be used for either home or foreign missions, "trusting she will see that it goes where the need is greatest," upheld, 113 C 231

gifts for founding a Catery, and to be used for old ladies' home, intended to be in trust though not so expressed, 120 C 77

——T named "executor and trustee" of estate intended as trustee of these trusts, 120 C 77

——fact that he died before testatrix nil sig., as court could appoint another trustee, 120 C 77

gift for founding Catery for care of homeless animals is proper charitable use; terms not too uncertain to be valid, 120 C 77

cases reviewed as to power of selection in trustee where gift is to class of beneficiaries generally defined, and present rule stated, 120 C 77

——if gift is to class defined with reasonable certainty and power of selection in trustee or someone else is necessary, that power will be implied; no distinction is made between trustees who are corporate or voluntary associations and those who are individuals, 120 C 77

——so power of selection implied to trustee in gift for worthy poor Protestant women over sixty years of age, residing in Ansonia, Derby and Seymour, 120 C 77

under statute, testator not required to designate particular charitable purpose for which property bequeathed or devised to trustees is to be used, 123 C 549

——gift valid if testator gives trustee power to select such purposes and no gift accompanied by such power is void for uncertainty, 123 C 549

——but if trustee may select organizations not devoted exclusively to charitable purposes, entire gift is void, 123 C 553

previous to 1925 testator required, to create valid charitable trust, to designate, with some degree of certainty, charitable purpose intended, 126 C 665

——statute of 1925 removed this requirement and charitable gifts in trust now valid where trustee given unlimited right of selection, 126 C 665

trust for education sustained as for charitable purpose on broad ground that education forwards cause of civilization and humanity, 126 C 665

——where nothing in will to indicate different intent, such gift carries strong indication of intention that it shall be in field of charitable uses, 126 C 665

——bequest to such educational institutions as trustee may select is interpreted not to

include those conducted for private profit, 126 C 665

while court will not interfere with discretionary power vested in trustee, in absence of fraud, bad faith or abuse of discretion, trustee may seek its advice as to legality of action it proposes to take, 126 C 665

——so trustee of charitable trust with power of selection, having selected such a purpose, is entitled to advice as to whether purpose was proper one, 126 C 665

trust directing trustee to distribute balance after life estates "to such charitable and educational purposes as it may deem wise," *held* valid charitable trust, 126 C 665

no question of right of Legislature to make charitable trusts valid where trustee is given unlimited right of selection, 126 C 673

where gift was to "such charitable, benevolent," etc. institutions as executors may determine, improper to form corporation composed of executors and other persons who might be constituted members under its by-laws to select the beneficiaries, 128 C 638

nothing in terms of will indicated that "benevolent" was used in other than natural significance, and executors could select beneficiaries accordingly, 128 C 638

conveying of property to charitable corporation to be used for one of authorized purposes not in itself sufficient to establish trust, 129 C 106

town not strictly trustee of lands conveyed to it with agreement that they be used forever as public so as to be entitled, as such, to damages for taking of them, 129 C 106

——but when town accepted lands under agreement to maintain them perpetually as park, valid charitable use came into existence, 129 C 106

§ 4. Purposes and Uses; What Constitutes Charitable Use

See also PERPETUITIES § 4 and TAXATION § 6

asylum for deaf and dumb a charity, 4 C 172

trustees for receiving donations for support of bishop, a charitable corporation, 7 C 477

bequest in trust to school society, for educational purposes, *held* valid, 23 C 40

——provision for trustees from ecclesiastical society will be enforced, 23 C 43

——aliter, if to promote sectarian or denominational views, 23 C 43

devise of land to a town, income to be used for repairing highways and bridges, is for a public and charitable use, 24 C 350

bequest for promotion of education among Indians and Negroes, valid, 30 C 113

whether church can take legacy to keep cemetery fence in repair, quaere, 39 C 217

not all benevolent uses are "charitable," 44 C 71

bequest "for building a Catholic convent in New Britain," *held* valid, 49 C 34

——*held* to be a bequest to the persons vested by the church laws with power to act, 49 C 34

trust to keep up cemetery lot not charitable, 51 C 352, 73 C 678

a little charity cannot preserve an entire bequest, 51 C 386

——where the remainder of bequest is for noncharitable use, 51 C 386

"charitable assistance and benefit"; "charitable" qualifies "benefit," 52 C 412

provision authorizing executrix to disburse certain sum "to such worthy persons and objects as she may deem proper," *held* invalid, 53 C 242

bequest of income to trustees for certain charitable purposes named, with clause authorizing wife to dispose of portion of income "for such charitable purposes as she may deem proper"; *held* power of wife void for uncertainty in charitable purpose, 53 C 242

bequest "to help in the support of preaching so long as such is kept up as at present" not void for uncertainty, 55 C 166

bequest for care of burial lot, *held* valid under statute, 57 C 147

bequest for benefit of "poor deserving Jewish families" is valid, 57 C 149

bequest for relief of poor of parish *held* charitable, under statute, 57 C 275

language of will establishing a charitable home *held* to sufficiently state the charitable purpose, 63 C 125

——also to sufficiently indicate the nature of the "assistance" to be given such beneficiaries, 63 C 125

trust to church for particular denomination is charitable; benefits whom, 67 C 554, 74 C 586

——use specified not so indefinite as to be void for uncertainty, 67 C 555

that gift for poor also benefits taxpayers will not prevent its being a charity, 68 C 527

bequest for erection of chapel upheld, 74 C 586

gift "for a home for ladies of advanced age and infirm" upheld, 74 C 586

gift to Advent Society to combat the idea of immortality not contrary to public policy, 75 C 83

a parochial school is a charitable institution, 81 C 278

gift to charity for its general purposes, good; presumption is, gift was intended for charitable purposes, 90 C 592

gift for children at home conducted by charitable corporation, upheld, 90 C 592

nature of gift to charitable corporation and duty of the court, 90 C 592

if a beneficiary is not chartered, the charitable work it has done for many years shows its character, 90 C 592

gifts to Yale University are a charitable trust, 92 C 111
trust is sufficient if purpose of testator, objects of benefaction, etc., sufficiently appear, 93 C 344
trust for the education of youth is a charitable one, 93 C 344
not necessary to specify that beneficiaries are to be "poor" persons, 93 C 345
organization for advancement of public causes by legislation, not charitable, 95 C 51
whether organization is charitable depends on terms of its charter, 95 C 55
under our statutes no distinction between charitable and religious uses, 98 C 323, 113 C 232
interest of gift to be used yearly to fit out missionary boxes is sufficiently definite, 98 C 335
gift of land for meeting-house is one to public charity, and favored by law, 98 C 681
gift to charity not void for uncertainty, 100 C 513
——where for purpose of sending poor children to country, 100 C 513
——charter of trustee reviewed; *held* to give power to perform trust, 100 C 513
——and to give power to select individual beneficiaries out of designated class, 100 C 513
trust for such inhabitants of two towns as shall associate themselves together for maintaining public worship is charitable use, 109 C 529
——does not offend against Statute against Perpetuities, 109 C 529
——but is too indefinite as to mode of selection and time to be valid, 109 C 529
gifts to an educational association for its purposes are not trusts in the proper sense of the word, 113 C 200
——hence cannot be attacked for uncertaintv in stating purposes, 113 C 200
——property is held for charitable purpose, 113 C 200
——rule against accumulations does not apply and only limitation is power of court to take remedial measures, 113 C 200
where testator attaches certain conditions to gift, acceptance requires that it be administered accordingly, 113 C 205
purposes for which gifts for educational purposes may be used, 113 C 208
——they include payment of salaries of teachers of domestic science, art and music, building up physical health by athletics and recreation, manual and industrial training, lectures and moving pictures, prizes and trips of an educational nature, transportation of pupils, granting of scholarships, 113 C 208
gift of income to church, but if it should dissolve or abandon purpose for which it was created, then over, did not lapse where church was merged with others in one united church and technically dissolved, 120 C 27
law treats charitable trusts on broader basis than gifts of private nature, 120 C 32
——construes them with utmost liberality to carry out charitable purposes of donor, 120 C 32
gift for founding Catery for care of homeless animals is proper charitable uses; terms not too uncertain to be valid, 120 C 77
gifts to ecclesiastical society for maintenance of its churches are charities which are not within Statute against Perpetuities, 120 C 477
residue to trustees to pay income to organizations in New London devoted exclusively to religious, charitable, scientific, literary, historical or educational purposes, including encouragement of art, 123 C 550
——all objects mentioned when divorced from profit motive and so conducted as to serve public at large are within field of proper charitable uses, 123 C 551
——considering preamble and other public gifts, mind of testatrix fixed predominantly upon such distribution as would be for public benefit within scope of established charitable uses, 123 C 551
——inclusion in description of requirement that organizations be "exempt" from federal and state transfer and inheritance taxes establishes intent that only such as are exclusively charitable shall take, 123 C 551
——uses not void because of uncertainty or indefiniteness, 123 C 551
——and fact that duration of trust is unlimited does not affect validity, 123 C 551
gifts for religious purposes, educational purposes and relief of the needy are for charitable uses, 123 C 553
——so are gifts for literary societies, historical organizations and organizations devoted to scientific purposes when divorced from profit motive, 123 C 553
our Statute of Charitable Uses is substitute for the Statute of Elizabeth, 123 C 553
——enumeration in it of certain uses does not exclude others, 123 C 553
——scope of charitable uses varies with advance of civilization, 123 C 553
provision for purpose and construction of auditorium for lectures, musical and other entertainment for benefit of public is charitable trust, 125 C 131
gift to construct and maintain building for charitable purposes for benefit of those of public who have occasion to use it constitutes valid charitable trust, 126 C 286
——fact that its duration is for indefinite time in future will not invalidate it, 126 C 290

——gift of money for chapel in cemetery is devotion of it to religious use, 126 C 286
inherent in doctrine that benefit to be conferred shall be sufficiently general so as to redound to public good; number of individuals to be served not necessarily determinative, 126 C 286
——bequest to build chapel in private cemetery when it is held out as offering burial lots for sale to general public, sufficiently serves public interest to be one for charitable uses, 126 C 286
trust for education sustained as for charitable purpose on broad ground that education forwards cause of civilization and humanity, 126 C 665
——where nothing in will to indicate different intent, such gift carries strong indication of intention that it shall be in field of charitable uses, 126 C 665
"benevolent" standing by itself is broader than word "charitable," 128 C 638
policy of courts to look with favor upon gifts to charity and sustain them where possible, 128 C 644
——if there appears from whole will an intent to devote property to charitable use, a narrower interpretation may be given to word than is its natural import, 128 C 644
Statute of Charitable Uses requires perpetual maintenance of lands as public park, where town accepted them under such agreement, 129 C 106

§ 5. Doctrine of Approximation; Cy Pres

principle of cy pres has never been incorporated into equitable jurisprudence of Connecticut, 22 C 31, 54
where beneficiary school society abolished after testator's death and free public schools established, *held* income could be appropriated to buy school books of scholars within limits of old school society, 39 C 63
under statute, the Superior Court has large equitable powers; extends cy pres doctrine in trusts created by deed, 63 C 126
——whether powers extend to charitable trusts created by will, quaere, 63 C 126
equitable powers of Superior Court, under statutes, extend to application of cy pres doctrine, 63 C 135
——whether it has authority to deal in same manner with charitable trusts created by will, quaere, 63 C 136
trustees may carry out provisions for designated class of beneficiaries in such ways as may be open, according most nearly to that designated by testator, 64 C 320
——is in no way invoking doctrine of cy pres, 64 C 320
doctrine of cy pres recognized to a limited extent by recent legislation in trusts created by deed, 67 C 567
where literal performance is made impossible by law after testator's death, gift still vests; case of gift to be used for erecting a building on land which was later condemned, 82 C 378
when named state institution cannot accommodate designated class of beneficiaries, may send to another state institution, 84 C 544
charitable trust subject of equity court's solicitude, 85 C 320
——has jurisdiction to see purpose of donor does not fail, 85 C 320
power of court to order sale where, by change of circumstances, execution of trust in accordance with terms of creation will fail to secure its object, 98 C 677
——changes in neighborhood making necessary removal of church, 98 C 677
——if deed of trust contains provision for reverter if church moved, court could not order sale, 98 C 685
cy pres doctrine recognized here, 99 C 22
——its nature; not applicable where creator of trust provided for disposition of property on failure of trust, 99 C 22
——gift of land to church for building with provision for reversion to grantor's heirs if it ceases to be used for that purpose does not permit sale by court of land not longer available for church, 99 C 22
——such a provision for a reverter is valid, 99 C 22
——if there had been no reverter court might have ordered land sold, 99 C 22
——gift of land for church as charitable use, 99 C 30
in case of charitable trust, Superior Court may act under cy pres doctrine, 100 C 5
——but only when intent of testator as expressed in will cannot be carried out, 100 C 5
——hence where will gave fund, income to be used to increase educational facilities for children in certain districts, with broad discretion in trustees, principal to go to corporation or association formed to maintain an academy or high school if there ever should be one, trustees may not turn over part of principal to town to aid in equipment of school for high school instruction, 100 C 5
doctrine of cy press; its origin and limitation, 100 C 10
Pomfret School *held* not a charity; cy pres doctrine not applicable, 105 C 456
property of expensive private school conducted by religious order *held* not so sequestered to charitable use that on dissolution of corporation cy pres doctrine would apply, 108 C 136
modified cy pres doctrine as applied to charitable trusts, 108 C 260
where testator provided for disposition of fund

in case of failure of charitable bequest, doctrine of cy pres has no application in broader aspects, 116 C 347
testator left fund for benefit of Baptist Sunday school under direction of pastor and supperintendent; that church discontinued separate services and library was transferred to Episcopal Church, where teachers and pupils then attended, but there was no amalgamation of the two churches; *held*
——so long as possibility remained that Baptist Church might resume Sunday school it could not be held that bequest had failed, 116 C 347
——use of the income for benefit of library deposited with Episcopal Church effectuated testator's intent as well as possible under situation, 116 C 347
——Superior Court has power to appoint other persons to direct expenditure, since there is no acting pastor and superintendent of Baptist Church, 116 C 347
doctrine of approximation, 120 C 77
——English cy pres doctrine never adopted here, 120 C 77
——modified cy pres in this country; if it is or becomes impossible or impracticable or illegal to carry out particular charitable purpose, and if settlor manifested a more general intent to devote property to charitable purpose, trust will not fail but courts will direct application of property to use falling within general purpose, 120 C 77
——effect is to carry out real or dominant intention of testator, though particular method is not provided or is ineffectual, impossible or impracticable, 120 C 77
——so where $2000 gift was insufficient to establish Catery near Ansonia, decree that money be turned over to Humane Society, justified, 120 C 77
——but "for general purposes of Society" too broad; use should be restricted to care of animals testatrix had in mind, 120 C 77
——and if possible income should be devoted toward maintenance by Society of institution near Ansonia, 120 C 77
——so where $5000 gift was insufficient to establish home for Protestant women over sixty, etc., judgment that G Hospital should administer trust justified, 120 C 77
——but it should direct that income be used for shelter, support and care of such women, 120 C 77
effect of application of doctrine of approximation is to carry out real or dominant intent of testator, though particular method prescribed for accomplishing that purpose proves impracticable or impossible, 121 C 520
where residue ($27,000) was left in trust, income to be expended to establish home for aged poor of Waterbury in memory of wife, and income was manifestly insufficient, and building up of capital through accumulation would take indefinitely long time, doctrine of approximation properly applicable, 121 C 520
——fund to be named for wife, and income to be expended for support and care of aged poor within two Waterbury hospitals, or within their own homes, homes of others, or other institutions, 121 C 520
——visible, conspicuous and tangible symbol, such as building, unnecessary to carry out dominant intent of testator, which was charitable, 121 C 520
——this confirmed by consideration of will as a whole, 121 C 520
residue left in trust to construct memorial to father, preferably drinking fountain; *held* plan of trustee to contribute fund (now $300,000) to building fund of Hartford Public Library for new building to cost $750,000, which should contain suitable memorial not such as authorized by will, 124 C 490
though complaint did not allege such impossibility or impracticability as to bring case within doctrine of approximation, court pursued this inquiry though issue could only be determined in another action, 124 C 491
Superior Court, as court of equity, has power to carry out general intent of donor of charitable trust, though particular form or manner indicated by testator cannot, because of changed conditions, be followed, 124 C 492
doctrine of approximation does not require impossibility; impracticability may be proved, 124 C 492
——trustees might prove themselves entitled to decree under doctrine to use fund in connection with building library, 124 C 492
——concrete plan suggested by trustees might be approved by court in another action, judgment to carefully define and limit use of fund, 124 C 492
——but since fund might become intestate property, representatives of testator's estate should be made parties, 124 C 492
in exercising its power under doctrine, court seeks as nearly as may be to effectuate intent of testator, 124 C 492
where gift by will to charitable organization which has ceased to exist, distribution frequently authorized to another organization, or, where it has merged with another, to the latter, under cy pres doctrine, 129 C 136
——doctrine applied when impossibility of carrying out exact intent exists at testator's death as well as when it arises subsequently, 129 C 136

——but applied only where will evidences general intent to devote property to charitable use; to which intent that it go to particular organization named is secondary, 129 C 137
——that functions of organization which has ceased to exist have by merger passed to another doing similar work not enough, 129 C 141
——so where gift after life use to X church, without any reference to use to be made of money, cy pres doctrine not applicable so that another society which took over assets and functions of X church would receive gift, 129 C 137

§ 6. Liability for Torts of Agents and Servants

charitable corporation without capital stock, whose members derive no profit, not liable for injuries to patient resulting solely from negligence of servant, where it has exercised due care in his selection, 66 C 98
——in such case servant is alone responsible for his own wrong, 66 C 98
defendant's claim that, being charitable corporation, its duty toward invitee of its lessee was limited to exercise of ordinary care in selection of agents, not considered, since not raised in trial court, 103 C 521
eleemosynary character of charitable corporation such as hospital does not afford it immunity from liability to invitee for tortious acts of its servants, 113 C 188
——otherwise as to patients, 113 C 188
plaintiff injured while carrying wife from hospital where she was patient; hospital *held* not exempt from liability for servant's negligence, 113 C 188
not liable, on grounds of public policy, for injuries sustained by patient as result of negligence of physicians and nurses employed by it, in selection of whom it exercised due care, 117 C 585
——but to invitee upon premises, not a patient, owes same duty as does any landowner, 117 C 585
responsibility of charitable hospital for patient differs from that of private hospital for profit, 118 C 625
duty to use reasonable care to employ nurses and attendants who possess reasonable degree of learning and skill, 118 C 625
Yale University liable to one coming to visit patient in Institute of Human Relations, who fell on icy walk, 122 C 646
charitable institution not responsible to those who avail themselves of its benefits for injuries sustained through negligence or torts of its managers, agents and servants, 123 C 646
——making of false and fraudulent representations comes within words "negligence or torts," 123 C 646
——no distinction between ordinary hospital patient and inmate against will since immunity is not based on waiver but on public policy, 123 C 646
Hartford Retreat *held* charitable institution, 123 C 646
——mere fact that some patients pay does not destroy charitable character, 123 C 654

CHATTEL MORTGAGES

See Mortgages § 35

CHECKS

See Banks and Banking § 4; Bills and Notes § 19

CHILDREN

See Abuse of Female Child; Adoption; Automobile § 23; Bastardy; Divorce § 10; Guardian and Ward; Infants; Negligence § 12; Parent and Child; Seduction; Wills §§ 20, 43

CHURCH AND ECCLESIASTICAL SOCIETIES

See also Charities; Perpetuities § 4; Taxation § 6

formerly coincident with the town, and took name of town in which located, K 46
dissenters liable to contribute to debts contracted before separation, 1 R 326, 330
deed to society's committee and successors *held* good, 2 R 298
on division, first society retains whole fund, 2 R 433, 4 D 367

——voluntary division of lands by first society *held* valid, 4 D 366
suits by part of church society, under special authority, 2 D 259
bond to committee by name and their successors may be sued by successors as committee, 3 D 464
vote to hold meeting on certain day each succeeding year; meeting on such day without further notice illegal, 4 D 62
——notwithstanding custom of fifty years, 4 D 62
meaning of church as used in devise, 2 C 291
continues the same when old members are incorporated, 3 C 41
"call to settle," when accepted is office for life, 5 C 412
pastoral office; what acts are a cause of forfeiture, 5 C 414
——exclusively of ecclesiastical cognizance, 5 C 414
——claim of forfeiture may be how waived, 5 C 415
offer of pastor to perform is equivalent to performance, 5 C 416
not divested of local character by adoption of constitution, nor by subsequent laws relating to, 6 C 227
becomes a stockholder by subscribing to bank stock, 7 C 470
——a part of the corporation and liable for its debts, 7 C 474
committee of, hold office until successors are legally chosen, 10 C 206
meetings of, to be legal must be warned by committee, under statute, 10 C 207
——society cannot dispense with warning by committee, 10 C 208
church society *held* under the facts to be a mere trustee, 12 C 113
——construction of statute de gifts for support of ministry, 12 C 128
clerk of ecclesiastical society may attest copies of its documents, 14 C 279
conveyance of church pew is a transfer of real estate, 14 C 279
——effect of vote of society on owners not church members, 14 C 279
——cannot prevent title passing by descent, 14 C 279
certificate of membership in, is a public document, 14 C 289
members of voluntary association are not personally liable, 16 C 516
report of committee not acted on not an admission by society, 20 C 200
whether pastor abandoned society is a question of fact, 21 C 166
want of established name does not affect its rights if legally constituted, 22 C 132
"wardens and vestry" of Episcopal Church may appeal from probate, 22 C 132
church and society are distinct bodies, 23 C 42
trustees under will to be appointed from; what societies eligible, 23 C 44
seceding members lose right to participate in funds of, 23 C 271
——legislature has no power to vest funds in seceders, 23 C 271
——or to set off unwilling members of, to new society, 23 C 275
——limits of old society so divided remain unimpaired, 23 C 275
Legislature cannot divide and vest part of funds of, in new society, 23 C 276
may sell church to pay debts if for best interests of, though action be opposed by members contributing to build church, 33 C 401
meeting house on part of highway; adverse possession, how affects, 35 C 431
——gains title by such possession, 35 C 431
contract between minister and Congregational Church implies what duties, 38 C 166
——minister subject to platform, constitutions and usages of Congregational Church, 38 C 166
contracts for salary; inoperative when pastoral relation ceases, 38 C 166
——this relation may be severed, how, 38 C 166
polity of Congregational Church is not wholly contained in Saybrook Platform, 38 C 167
Saybrook Platform examined and construed, 38 C 169
dismissal of pastor by mutual request is conclusive without further action, 38 C 173
whether consociation may dismiss for expediency, a question for jury, 38 C 174
——depends on their finding as to usage in this respect, 38 C 175
proceedings de dismissal if unfair, are invalid, 38 C 176
witnesses called before consociation to be sworn, 38 C 177
land deeded to trustees to be held agreeably to book of discipline of Methodist Church; *held* property did not vest in church as a company, 39 C 293
pew rent *held* not included among necessaries, 40 C 76
powers, rights and duties of committee of, 46 C 530
——what legal proceedings they should defend at expense of society, 46 C 530
——no right to try legality of their election at expense of society, 46 C 530
a Protestant Episcopal Society is a corporation under statute, 57 C 283
——rector of, is agent in the diocese of Connecticut and almoner of the parish, 57 C 283
——his duty is to distribute such alms as come

from the holy communion and other sources, 57 C 283
——may decide who are poor of such society, 57 C 285
——one object of parish is the relief of the poor, and society may take for charitable uses, 57 C 284
under statute are local, organized under our laws and connected with some church organization, 61 C 231
relation between church in Connecticut and church in general, 67 C 554
statute requiring choice of lay members of corporation in connection with Catholic Church is mandatory, 69 C 286
powers of bishops of Methodist Episcopal Church; property rights on merger of churches; court follows decision of highest ecclesiastical tribunal, 73 C 216
Congregational Church; powers, organization and procedure of council; irregularities in procedure cured by acquiescence; vote of church may be taken on Sunday; pastor's settlement, donation and dismissal, 73 C 718
nature of German Evangelical Lutheran Church; change of synod does not effect trust for church; government by "congregation as a whole;" discretion of court as to issuing injunction to prevent use of church by new pastor, 78 C 343
ecclesiastical society *held* not a "missionary society," 78 C 533
union of individual churches into general organization, 81 C 204
a parochial school is a charitable institution, 81 C 278
note signed by church trustees and proceeds used for repairs; church in no position to contest it as against bona fide indorsee, 102 C 609
custom of ancient society to locate its buildings on nontraveled portion of highways may be considered in action involving title to land, 103 C 332
adverse possession of shed used by members of church, 103 C 337
nature of ancient ecclesiastical societies, 103 C 337
order of archbishop summarily removing priest not enforceable by injunction, where authority to do so not proved, 109 C 354
vote de suspension for nonpayment of dues *held* abrogated by subsequent by-laws, 111 C 677
provision that member shall be suspended for violating by-laws does not work ipso facto suspension, 111 C 677
voluntary association organized for religious purposes has not capacity to hold legal title to real estate, 113 C 696
judgment vesting title in church which was voluntary association ineffective to vest such title, 113 C 696
where there is a schism in a member of an associated church body, rule for determining which has higher right stated, 113 C 696
——applied to the Russian Orthodox Greek Catholic Church, 113 C 696
——present relationships of parties not to be tested by digging up past faults or inconsistencies, 113 C 705

CITY

See Municipal Corporations; Municipal Courts

CIVIL PROCESS

See Abuse of Process; Attachment; Execution; Garnishment; Process; Public Officers § 9

CIVIL SERVICE

validity of appointments of defendant teachers to position of principals of elementary schools in Bridgeport by board of education without competitive examination, 125 C 16
——amendment to charter setting up civil service system construed to exempt, without limitation, candidates for such positions from examination, 125 C 16
——defendants were "appointed" within meaning of exception rather than "promoted," 125 C 16
court should have embodied in judgment conclusion that civil service classification which provided for "police sergeants" but not "detective sergeants" did not abolish latter office, 125 C 344
provision in § 87 of Bridgeport charter that decision of judge hearing an appeal shall be final is not applicable under § 21 of civil service law, though latter provides for appeal "in manner prescribed" by § 87, 125 C 345
function of civil service commission in re-

moval, discharge or classification of officers is administrative or executive, 125 C 346
janitor's tenure as provisional appointee under civil service amendment to Bridgeport charter did not ripen into permanent appointment by fact that he was allowed to hold over four months, 128 C 35
——and commission did not endow him with permanency of tenure by hearing his appeal, 128 C 35
full hearing before commission of appeals to it being required by law, no constitutional requirement for hearing de novo in appeal to Superior Court; usual rules de appeals from administrative board apply, 128 C 35
assistant tax collector of Bridgeport not an executive office or position within provision of Civil Service Act placing in unclassified service "all executive offices or positions," 128 C 585
letter from commission to assistant tax collector placing her in classified service is practical construction placed on act by body entrusted with its administration, 128 C 590

CLAYTON ACT

See United States

CLERK OF COURT

See Courts

CLOUD ON TITLE

§ 1. In General
2. Pleading and Practice; Evidence

§ 1. In General

equity will confirm title under administrator's deed invalid for omission to make returns as against heirs, 2 R 210
equity will aid creditor to perfect title to lands fraudulently conveyed, 11 C 369
——no defense that there are other lands which might be taken, 11 C 369
equity will remove cloud from title when, 21 C 488
——refused if vexatious and instrument is void on its face, 21 C 488
equity will not quiet the possession of one whose equitable title has become a legal one, nor settle disputed boundaries between adjoining proprietors, 26 C 236
bill lies for wrongfully putting undelivered deed on record, 27 C 307
relief on bill quia timet is not granted as matter of course, 28 C 582
——not granted if clear legal title is in plaintiff and no apparent cloud on it, 28 C 582
——whether granted when writing sought to be canceled is void on its face, quaere, 28 C 582
petition to perfect title not granted where legal title is sought for use in securing independent claim, 35 C 127
well settled that court may investigate and settle title in suit for foreclosure, 49 C 307
——as against adverse claimant under prior deed alleged to be fraudulent, 49 C 308
equity will not set aside deed void on its face as being cloud on title, 44 C 455
a caveat covering whole tract, by a purchaser of a part only, constitutes cloud, 50 C 262
——and *held* that the purchaser gained no equitable title and cloud could be removed, 50 C 262
charitable bequest in will imposing charge on property *held* to constitute a valid incumbrance and not a cloud, 54 C 342
what is a cloud on title, 59 C 498
——mere assertion of a claim orally or in writing does not constitute, 59 C 498
an action for trespass by respondent against petitioner does not constitute cloud on title, 59 C 498
——petitioner claiming title and possession has adequate legal remedy as defendant in trespass suit, 59 C 498
——and equity will not interfere, especially since legal and equitable relief may be had in the same suit under statute, 59 C 498
——and the withdrawal of the trespass suit by plaintiff would not affect defendant's right to prosecute cross-complaint under Practice Act, 59 C 498
where rights of both parties depend on the construction of a will, a mere assertion by one does not constitute cloud on title, 62 C 95
——that such assertion of claim by defendant prevented sale of land does not affect, 62 C 95
——a bill in equity for removal of cloud upon title by plaintiffs in possession will not lie, 62 C 95

a court of law is the proper forum to try titles to land, 62 C 95
——jurisdiction cannot be transferred to a court of equity upon pretense of removing a cloud on title, 62 C 95
equity will not try title; plaintiff must show valid title, 67 C 456
meaning of adverse claim, 68 C 273, 78 C 96
statute as to quieting title construed and upheld, 68 C 274, 78 C 98
statutory action, in general, 76 C 542, 77 C 22, 78 C 369, 80 C 330
bill to remove cloud does not lie where plaintiff is ousted of possession and ejectment is already pending, 76 C 542
statutory action should only be used where there is no other legal remedy, 78 C 369
release of one's claim of ownership estops one from thereafter claiming title, 83 C 386
in this action, Superior Court cannot assign dower nor limit or apply the right to any specific real estate, 84 C 216
equity will not try title where there is any dispute; it will restrain, however, until title is proved, 85 C 159
——it will act if party is in possession or has long enjoyed title, 85 C 159
if widow already has dower, court can ascertain the character and extent of her interest as tenant in common, 85 C 434
settling title to land; beneficiary for life not entitled under the statute to construction of trust, 90 C 63, 91 C 500
effect of amendment of 1915, 90 C 73
statute does not give greater remedial effect than that recognized in the English courts, 91 C 500
cannot be used to terminate a trust because unrepresented interests and interest of unborn persons might be affected, 91 C 500
where one gives a bond for a deed, he must clear the title, 92 C 180, 94 C 589
——failure to get in touch with the purchaser prior to date of confirmation, because he cannot be found, is no excuse, 92 C 180, 94 C 589
§ 5113, Rev. 1918, applies to riparian rights as to ownership of land on tide water, 93 C 501
cloud on title defined, 93 C 664, 95 C 473
——outstanding deed, void but apparently valid, is cloud, 93 C 664
inclusion, in award of damages for land taken for street, of sum to cover cost of retaining wall to hold up land not taken does not create cloud on title of this land, 95 C 473
cloud on title may be removed without showing substantial damage to pecuniary interests, 96 C 219
deed secured for cemetery purposes by fraudulent conspiracy, whereby owner is made to believe that it is for grantee's own use, may be removed from record as a cloud upon title, 96 C 219
statute de quieting title is constitutional, 98 C 554
conclusion that defendant had acquired ownership by adverse possession, *held* final, 99 C 418
——inasmuch as it violated no rule of law, reason, or logic, 99 C 418
plaintiff must rely on strength of his title, not on weakness of defendant's, 103 C 332
applies to personalty as well as realty, 105 C 83
title to twenty-five foot strip between parties' respective properties *held* to be in defendant with only easement of passage in plaintiffs, 107 C 252
document on land records asserting title to land which is neither caveat nor lis pendens is cloud on title, 108 C 38
——properly discharged of record, 108 C 38
to give effect to a reverter in a deed is not to impose a forfeiture, 109 C 529
where trustee and beneficiaries conveyed property to S, who gave back option to repurchase, in action by S to quiet title, decree permitting trustee to reacquire property on terms of option not improper, 110 C 208
broader scope of quiet title statute as amended, 110 C 214
plaintiff may not deny predecessor's title, 112 C 152
proper remedy to obtain possession of property from one not a party to foreclosure action by which he lost his rights, 114 C 93
where plaintiff as remainderman under will, had no title to personal property or to specific real estate, demurrer to prayer that cloud on his title be removed, properly sustained, 116 C 201
where plaintiff deposited money with title company to be held till old mortgage removed from record to its satisfaction, it was justified in refusing to return it where court had no jurisdiction of action brought to settle title, 117 C 39
——seven years having elapsed, no sufficient ground to permit plaintiff further time, 117 C 39
action to quiet title and for declaratory judgment, in which owners of servient tenement seek to have building restrictions in deeds removed, differs from action to enjoin breach of restrictions, 117 C 186
——judgment in former would nullify covenants for all time though change in condition might remove ground on which they were nullified, 117 C 187
——change in character of neighborhood may be such that equity will refuse injunction and remit plaintiff to action at law, resting

refusal on ground of great injury to defendant and slight to plaintiff, 117 C 187
——but judgment in former could be sustained only on finding that whole building scheme has become inoperative, 117 C 187
findings of court de plaintiff's chain of title upon which it based conclusion that he was owner of strip of beach examined and *held* not justified, 118 C 137
where both defendant's grantor and her agent were charged with notice that title to tracts stood in name of M, and agent actually knew this from former transaction, yet accepted deed from grantor who got title from M's son, *held* defendant could not interpose estoppel, 120 C 69

§ 2. Pleading and Practice; Evidence

adequate remedy by ejectment, when, 2 R 343
one who has deeded the land with covenants may sustain a bill, 21 C 488
receiver seeking to have land freed from fraudulent mortgage should not proceed under Acts of 1893, Chapter 66, 74 C 368
plaintiff in such bill must show substantial interest in himself, 74 C 523
if statutory action is used in place of ejectment suit, rules governing latter apply, 77 C 30
right to jury trial, 78 C 96
form of pleading, 78 C 96, 129, 369, 375
pleading; prayer for judgment declaring lease void for undue influence properly included, 80 C 330
plaintiff must plead and prove title in himself as basis for action under statute, 80 C 347, 363
president of railroad *held* to have power to institute suits to determine title, 81 C 466
when conclusion of trial court as to title is reviewable, 83 C 386
receiver appointed to collect rents pending action to quiet title, 85 C 434
where only question is, has one been ousted, either party can have a jury, 90 C 133
costs in action to remove cloud from title are discretionary, 92 C 345
"matter in demand" in action to remove invalid lien is amount of lien secured, 95 C 66
——if complaint does not state this, answer or counterclaim may supply omission, 95 C 66
not proper to include in complaint prayer that defendant set forth nature of his interest; this must be done under statute, in answer, 95 C 399
——if adverse claim is set up in complaint, defendant may deny it in answer or disclaim any interest, 95 C 399
defendant need not set forth his claim in answer if it appears in complaint, 95 C 399
——in this case the allegations in the complaint may be admitted and an issue of law raised, 95 C 399
in action of trespass mere allegation that defendant claims an interest in land and its denial does not permit judgment quieting title under statute, 99 C 123
——necessity of pleading nature and extent of claim, 99 C 127
character of premises and parties may be pertinent on issue of title, 103 C 332
——thus where church claims land in ancient bounds of highway, its old status and custom as to locating its churches, 103 C 332
decree not made when it was very doubtful whether all necessary parties were present and where one party was administrator upon two estates the creditors of which had conflicting interests, 103 C 354
since amendment of 1915, action may be brought by owner out of possession, 105 C 80, 109 C 307, 451
plaintiff need not allege that he has no adequate remedy at law, 105 C 80
judgment in former action, that defendant should have an opportunity to litigate his claim to an equitable lien, *held* not to establish existence of lien, 105 C 80
where plaintiff does not demand possession, he is not entitled to that relief, 105 C 82
essential allegations of plaintiff's ownership, 105 C 84
burden of establishing his claim to the property is on the plaintiff, 106 C 665
where plaintiff fails to prove his own title, he cannot question that of defendants or claim the court committed errors as to it, 112 C 152
though complaint claimed that plaintiff had fee, *held* that prayer for relief required consideration of possibility that plaintiff had equitable lien, 114 C 272
action to quiet title brought to District Court of Waterbury which was without jurisdiction and removed to Superior Court; copy of removal order not served on adverse parties; *held*
——neither court had jurisdiction, and mortgage not removed, 117 C 39
——action having been brought against defendant who was dead, and heirs or representatives not being joined, the judgment in it was null and void and could be attacked collaterally, 117 C 39
mere paper chain of title does not establish ownership unless possession is shown, though title satisfactorily established may draw with it possession in absence of evidence to contrary, 118 C 137
ancient deeds more than thirty years old, admissible to prove possession, 118 C 137
——deeds less than thirty years old at time

of trial *held* not sufficient to establish ownership, 118 C 137

——and there was no evidence of possession in plaintiff or his predecessors in title, 118 C 137

while title to particular tract draws possession with it, general possession of tract will not avail as regards any particular piece of land unless it is shown to have been a part of that tract, 119 C 282

burden on plaintiff to prove correct boundary line and his ownership of tract in dispute, 119 C 286

upon finding *held* court correctly ruled that plaintiff had failed to prove his cause by deed or adverse possession, 119 C 282

plaintiff must prevail on strength of own title not on weakness of adversary's, 119 C 282

——so erroneous admission of deed to defendant without proof harmless where plaintiff did not establish his own title, 119 C 282

one to whom property is transferred pending action may be substituted as plaintiff, 123 C 372

complaint in form of action to quiet title; object to remove lien of attachment, 123 C 377

COASTING

See Automobile §§ 5, 9(2); Nuisance

CODICIL

See Wills § 8

COLLATERAL SECURITY

See Pledge

COLLECTOR OF TAXES

See Bonds § 2; Taxation § 24

COLLEGES AND UNIVERSITIES

See also Taxation § 6

what constitutes one a student of Yale University although not matriculated within statute, 6 C 12

Yale; tax exemptions; history of, 71 C 316

trustees' power to determine who shall attend Connecticut College for Women, 87 C 421

gift to Yale is exempt from succession tax law of 1915 as being made to a "State aid" institution, 92 C 99

history and purpose of Yale, 92 C 108

——property is held on a charitable trust, 92 C 111

in a suit for tuition, *held* no evidence of fraud on the part of the college, 96 C 372

Yale may not erect bridge connecting two of its buildings over a highway without permission of city, 104 C 610

——city *held* empowered to grant permission to do this across High Street, 104 C 610

Harvard, Yale, Wesleyan and Trinity are institutions of public character without authority to make any profit, 115 C 136

——history of Harvard, 115 C 136

COLLISION

See Boats

COMITY

See Conflict of Laws

COMMISSIONER OF PUBLIC WORKS

See State

COMMISSIONERS OF ESTATES

§ 1. In General
2. Appeal; Evidence; Pleading

See also Estates of Deceased Persons; Executors and Administrators; Probate Court; Receivers

§ 1. In General

creditor of estate cannot be a commissioner, 1 R 265, 2 R 203

duty of commissioners to set off debts and report balance only, 1 R 348, 357

——can set off only mutual debts, 1 R 398, 6 C 19

commissioners not to consider expenses incurred since debtor's decease, 1 R 468

report to be rejected if one commissioner is a creditor, 2 R 203

Probate Court may disallow report of commissioners, 2 R 367

——cannot change it, 2 C 354

jurisdiction of commissioners is coextensive with that of courts of law and equity, 6 C 19, 16 C 195, 25 C 158, 26 C 372, 28 C 137, 41 C 559, 54 C 524, 56 C 185, 62 C 154, 409

duties of commissioners are judicial, 9 C 505

——disqualifications of judges apply to commissioners, 9 C 506, 19 C 589

power to pass on claims belongs alone to commissioners, 10 C 238

——they may determine nature and character of claims, 10 C 239

Probate Court may accept or reject the report in toto; duty to reject report, when, 11 C 422

brother of creditor of the estate cannot act as commissioner, 12 C 141

——if he does, the report of commissioners is void, 12 C 141

——remedy for party so aggrieved, 12 C 142

relationship is a disqualification of commissioner; relative of stockholder who is a creditor of company, 13 C 226

report when approved is equivalent to a judgment, 13 C 505

Probate Court cannot allow or reject claims against solvent estate, 13 C 505

commissioners may adjust accounts of parties, when, 18 C 130

commissioners are disqualified for the same reasons as judges, 19 C 589

——if inhabitants and taxpayers of town, are "interested," 19 C 589

——though town's claim is withdrawn after action, 19 C 589

court should allow dividend only on the claims remaining unpaid, where some allowed have been paid subsequent to report, 23 C 123

commissioners have powers of courts of law and equity, 26 C 373

commissioners have no power to adjust equities; can simply allow or reject claims, 27 C 246

commissioners should allow only existing debts or fixed liabilities capable of valuation, 27 C 261

——claim against deceased receiptor of property becomes a liability when, 27 C 266

as to power of court to allow rehearing after committee have reported, quaere, 30 C 78

claim for interest disallowed for usury; action of commissioners affects only insolvent estate, 32 C 551

claim allowed; no appeal; suit on executor's bond for nonpayment, *held* no set-off allowed, 35 C 587

Probate Court has power to go behind report of commissioners upon insolvent estates and marshal the general claims reported by them according to such equities as may justly give some claims a preference over others, 37 C 185

commissioners are a special tribunal to ascertain debts against the estate, to furnish Probate Court a rule for its guidance in the application of assets of estate to payment of debts, 37 C 349

duties of commissioners as to set-off; failure to present counterclaim, 37 C 352

notice to "known creditors," means known to those having estate in charge, 39 C 399

——embraces all claiming to be creditors, if known, 39 C 399

when further time given for presentation of claims, commissioners need not be reappointed, 39 C 400

commissioners may act on equitable as well as legal claims, 41 C 559

commissioners are an independent tribunal, 43 C 115

——quaere, as to commissioners deciding a plea of their own jurisdiction, 43 C 116

commissioners are merely to decide what claims estate shall pay, 45 C 39

——decision as to amount due is conclusive, if not appealed from, 45 C 39, 62 C 154
——but not as to person to whom sum is due, 45 C 40
——decree of Probate Court possesses only like efficacy, 45 C 42
adjudication by commissioners as to priority of lien on stock is not conclusive, 45 C 39
entire report of commissioners may for cause shown be rejected by court, 49 C 81
——court cannot revise report as to particular claims, 49 C 81
time of return of report of, not necessarily time report was "accepted" under statute, 49 C 81
effect of allowance or disallowance of claims, 51 C 111
are a common-law tribunal with ordinary law and equity powers, 54 C 524, 56 C 185
where a claim has gone to judgment and an attachment had been made, *held* only the costs accrued up to the time of assignment could be allowed under statute, though judgment was for debt and costs, 59 C 550
on insolvent estates, are an equitable as well as a legal tribunal, 62 C 154
allowance of claim binds Probate Court like a judgment, in application of assets, 62 C 154
appointment of commissioners discretionary with Probate Court, 105 C 596
where creditors of solvent estate apply for commissioners, public notice of hearing on application but not of meetings of commissioners necessary, 105 C 596
——notice of meeting to claimant and executors sufficient and beneficiary of heir who has died cannot complain, 105 C 596
——practice of directing in order that notice be given of meeting of commissioners approved, 105 C 602
——if given as directed commissioners have performed duty, 105 C 603
——effect of entry "filed and accepted" on report of commissioners, 105 C 596
——is not an order from which an appeal lies, 105 C 596
executor or administrator as representing all persons interested in estate, as regards meeting of commissioners on claim against solvent estate, 105 C 604
legatees may petition Probate Court for appointment of commissioners to hear and determine claim submitted by executor, 109 C 509
where claim against solvent estate is disallowed, claimant may apply for commissioners within one month after time fixed for presenting claims and if application denied may bring action within four months thereafter, 115 C 605
——purpose of statute requiring suit within four months after disallowance of claim on solvent estate, 115 C 607
——nature of proceedings by commissioners in case of insolvent estates, 115 C 607
estates should not be represented insolvent unless they are really so, 115 C 608
Legislature, in giving commissioners appointed to decide upon claim against solvent estate "same powers and duties" as commissioners upon insolvent estate, did not mean they should act under § 4929, Rev. 1930 and determine value of security for creditor's claim "upon any property of such estate," 128 C 662
——purpose of statute (§ 4920) was merely to provide method by which claim disallowed by executor might be submitted for decision to commissioners, possibly avoiding action at law, 128 C 668
——even if § 4929 were applicable to claim against solvent estate, mortgage made by decedent where he subsequently conveyed away property would not fall within it, as security is not "upon any property" of the estate, 128 C 662

§ 2. Appeal; Evidence; Pleading

See also Probate Court § 7

commissioners cannot testify how claim stood before them, K 259
party not presenting claim may appeal for irregularity in report or appointment, 1 R 244
disallowance of claim by commissioners is conclusive as to the creditor, 2 R 187
Probate Court decree of approval or rejection of report is a subject of appeal under statute, 11 C 423
appellant alleging claim as one of book debt is bound by rules applicable to that action, 32 C 541
appeal should be directly from doings of commissioners, not from court's decree under statute, 33 C 215, 36 C 212
an appeal from, is not an appeal from probate, 43 C 115, 59 C 548
decision as to amount due is conclusive, if not appealed from, 45 C 39, 62 C 154
under claim for "money loaned and paid, $10,000," proof of lost note for $1000, admissible, 46 C 427
appeals from commissioners under statute; "one month" dates from acceptance in fact of report, though no record is made of acceptance at the time, 49 C 82
an appeal lies from valuation of creditor's security by commissioners on insolvent estate under statute, 51 C 108, 68 C 184
formal pleadings not necessary before commissioners, 54 C 521
appeal from the doings of, carries up case precisely as it stood before commissioners, 54 C 524, 62 C 409

——differs therein from an appeal from probate decree, 54 C 524
on an appeal from, there is no propriety in the appellant filing reasons of appeal, 54 C 525
——the law presupposes that appellee denies the justice of the claim, 54 C 525
either party desiring a jury trial of an appeal from, must put it to jury at first term of court, 54 C 525
——after that term the matter rests upon agreement of parties or upon order of court, 54 C 525
an appeal from vacates judgment of commissioners and the trial in the appellate court is de novo, 59 C 548
irregularities in appeals discussed and proper method set out, 62 C 376 (footnote)
finality of commissioners' report in collateral proceedings, 71 C 520
an appeal from allowance of commissioners in the name of the executor or administrator sufficiently sets forth his interest, 82 C 500
appeal from doings of commissioners under statute removes entire cause for trial de novo in Superior Court where all matters connected with their proceedings or report may be reviewed, 105 C 596

COMMISSIONS

See Administrative Boards and Commissions; Municipal Corporations § 12

COMMITMENT

See Mittimus

COMMITTEES AND REFEREES

§ 1. In General
2. Procedure; Report
3. Review by Superior Court
4. ——In General
5. ——Procedure by Party Aggrieved by Report
6. Appeal to Supreme Court

See also Eminent Domain

§ 1. In General

submission to, by rule of court is irrevocable, 1 C 501
committee should not stay at house of either party during trial, 39 C 265
reappointment not necessary after continuance under rules of court, 53 C 328
——case stands referred until appointment is directly or impliedly revoked by the court, 53 C 329
——omission of clerk to make entry of reappointment on docket merely clerical and does not affect, 53 C 328
duties of state referees under Public Acts 1889, Chapter 249, 58 C 374
finding of jurisdictional facts by a tribunal of limited statutory authority may be questioned in any other court, 59 C 92
——but such finding is always taken to be true unless proved otherwise, 59 C 92
where resolution constituting committee provides for filling a vacancy, a member resigning *held* presumed to act legally, 59 C 92
——and act of majority in filling vacancy *held* legal, 59 C 92
removal of one committeeman from State before end of proceedings; status *held* not to be as if only two had been appointed, 59 C 211
——removal could be regarded as a vacancy and filled by the court, 59 C 212
jurisdictional fact should appear in judgment appointing a committee; can be waived, 86 C 658, 95 C 1
court need not find that boundary is lost before appointing committee, 87 C 71
parties bound to follow rulings of committee when correct and if they fail, cannot reopen case, 91 C 684
powers of committee in making judicial sale, 98 C 154
application by park and forest commission for reference to state referee under § 5069, Rev. 1930, for award of damages, instead of to three appraisers as provided in § 2167 *held* correct, 116 C 119
——former statute applicable to all condem-

nation proceedings by State and repealed inconsistent provision in § 2167, 116 C 119
——fact that § 2167 was included in Revision of 1930 not controlling, 116 C 119
formerly awards and compensation for taking of land were required by various statutes to be made by three persons as committee or appraisers, 116 C 119
——policy of substituting state referee afterward extended to all cases, 116 C 119
duty of state referee to find facts under Liquor Control Act, 121 C 696
appraisers under deficiency judgment statute; review, 122 C 451
functions of, in appeal from liquor control commission, 122 C 522

§ 2. Procedure; Report

award of, in book debt, must find expressly that party is indebted, 2 R 13
report of auditors in action of account, that defendant has fully accounted is defective, 2 D 120
report of, when accepted, becomes a part of the record, 4 D 374
——omission of report, in writ of error counting on record, is fatal, 4 D 374
incidental powers and duties of, 1 C 501
after due notice, may proceed to ex parte hearing, 1 C 502
cannot make award after time limited for report has expired, unless reappointed, 3 C 309
practice of committee, on petition for a ferry and its approaches, 20 C 225
one of two auditors cannot act without parties' consent, 20 C 333
——proceeding to a hearing before one only, a waiver, 20 C 333
duty of, to find facts, not evidence of facts, 20 C 588, 26 C 267
not to refer to court the decision of a question of fact susceptible of proof, 23 C 34
committee disqualified by remote interest of his wife, 23 C 383
——objection waived if not made as soon as known, 23 C 384
may make reasonable rules as to requiring names of witnesses, 26 C 311
finding that committee was uninfluenced by improper evidence, means only that there was no conscious influence, 27 C 572
a finding of fraud in report of, when none is alleged, of no avail, 27 C 626
report of, should find the main fact and not state mere evidence, 30 C 279
may open report to hear newly discovered evidence, if not returned to court, 31 C 368
duty of, to grant a rehearing for a cause sufficient to ground application for new trial, 31 C 368
committee may inquire into and state an account which is alleged in defense as an account stated, 36 C 420
may require parties to exchange copies of their claim, 37 C 428
evidence to prove objectionable items immaterial, if items are disallowed, 37 C 429
committee appointed to find the facts can neither allow nor disallow amendment, 41 C 38
powers and duties of, in assessing damages for diverting water, 42 C 139
hearing as to highway; filing bond without respondent's knowledge, not "irregular and improper," when, 45 C 238
adverse report; party loses right to withdraw, when, 47 C 436
adjournments of hearings before, are matters of discretion as with courts, 53 C 329
——their action is final in absence of corruption and fraud, 53 C 329
finding that defendant was bound to maintain embankment somewhere between certain points and that the water broke through between those points, *held* to mean that the defendant's duty was certain over some part of the designated place, 55 C 372
——but uncertain as to the exact extent of the line to be maintained, 55 C 372
——that the judgment was to be regarded as based upon failure to maintain the portion upon which defendant's duty was certain, 55 C 372
report not a judgment, especially in favor of one not a party, 57 C 330
whether referee can find the issue upon facts found by him, quaere, 58 C 374
——where referee found the issue and court also found the issue upon facts, the error, if any, was harmless, 58 C 377
of layout under statute; may act by majority as public agents, when, 59 C 211
——motion to recommit report of majority *held* a waiver of objection to majority acting in absence of third member, 59 C 212
removal of one of committee from State before end of proceedings, regarded as a vacancy to be filled by court, 59 C 211
——not as if only two had been appointed, 59 C 212
use of form for report furnished by counsel, 74 C 189
administrative tribunal need not follow strict rules of evidence, 75 C 247
special commission to act in purchase of gas or electric light works; not judges; should not pass on constitutionality of act creating it, 76 C 566
where committee viewed premises, stenographer's report of testimony inadmissible, as to value, 76 C 567
members may testify as to matters considered by them; other evidence as to this, 76 C 567, 75 C 248

right of committee to make alternative assessments, 82 C 379
what should be considered in condemning a toll bridge, 82 C 460
report of majority treated as report of committee, 82 C 464
need report only ultimate facts unless he believes report is to be questioned, 85 C 237
if committee finds boundary not lost and then describes it, it is surplusage, 87 C 70
proper to include in report facts necessary to show its ruling on a claim it denied, 88 C 431
what is irregularity in conduct of a committee, 92 C 31
committee to find facts cannot pass on demurrer, 92 C 193
decision of committee assumed to be regular, 93 C 146
committee need not seek accounting on paid mortgage, 93 C 146
committee's finding as to pure issue of fact is final, 93 C 287
can report all facts on alternative claim and make award in alternative as the court may find the law, 95 C 537
the facts, as to each item of damages claimed, should be found and reported by the committee, 97 C 664
——committee has no authority to disallow a claim or an item of a claim, 97 C 665
——nor to adopt or reject a rule of law, except by way of recommendation to court, 97 C 665
finding, in suit on building contract, that owner "proceeded to complete said contract and building," etc., *held* sufficient to show completion in accordance with contract, 97 C 724
committee to make judicial sale may require deposit, 98 C 147
——procedure where purchaser fails to carry out deal, 98 C 147
committee may properly recommend conclusion which underlies the judgment given, 98 C 396
——that sale will best promote interest of parties, 98 C 396
referee has merely power to hear evidence and report facts, 98 C 562
report should set forth parties' claims of law, 98 C 566
power limited to finding facts and reporting recommendations; report *held* not an award of alimony but merely recommendation, 99 C 19
state referee cannot determine law but should report all facts, 101 C 535
plaintiff need not establish all he alleges if he proves enough to sustain judgment, 102 C 96
report need not contain findings literally corresponding with complaint, 102 C 96
report will support judgment for plaintiff if essentials of cause of action appear, 102 C 96
committee may incorporate subordinate facts which explain the ultimate fact found by him, 108 C 515
——thus findings and recommendations as to related matters involved in other pending actions will not invalidate report if adequate to support judgment by court, 108 C 515
——inclusion of irrelevant facts nil sig., 108 C 520
purpose of offering expert opinion as to land values is to aid trier in arriving at own conclusion, which is reached by weighing those opinions in light of all evidence and his own general knowledge, 117 C 75
——if expert includes improper elements this circumstance to be weighed by trier, 117 C 75
——or if he fails to include relevant circumstances trier may conclude his estimate too low, 177 C 75
——in instant case, *held* committee might properly reach conclusion he did, though expert included improper elements and qualified testimony on cross-examination, 117 C 86
facts concerning amount plaintiff paid for property, repairs to building, etc., evidential and would not necessarily affect conclusion of referee, 117 C 138
addition to report of summary statement of evidence of value not proper; evidence has no place in report, 117 C 138
claim that earning capacity of property not alone controlling as to market value but that prospective purchaser also looks to its adaptability to future uses, so clearly correct that it cannot be assumed referee did not apply rule, 117 C 138
duty of committee to state claims of law made by parties and which either party desires to have determined, 117 C 140
——this presupposes that committee shall be informed before filing report of desire of party to have claim stated, 117 C 140
——and carries connotation that committee shall state rulings thereon, 117 C 141
——as motion did not allege that plaintiff expressed such desire to referee, he cannot rest motion upon latter's failure to obey rule, 117 C 141
claim that fair market value of property should be based upon its earning capacity to owner and not upon opinion of third party, had no application to facts in report, 117 C 142
conclusions of referee that sales of cement by plaintiff were made directly to defendant and that plaintiff cancelled agreement in

accordance with its terms, *held* supported by subordinate facts, 119 C 603
——conclusion to this effect as to "specific work" contracts was conclusion of fact, not law, from subordinate facts found, 119 C 603
——and that facts found are inconsistent with language used in specific work contracts does not require conclusion that they were not properly found from all evidence, 119 C 603
committee appointed to award amount due for taking of land has no power to pass upon validity of claims of defendants other than owners to share in award, 124 C 445
alternative finding, 125 C 654
where state referee has reason to believe that court will be called upon to determine correctness of his conclusions as to damages allowable for possible future changes in use of land taken for highway, he should find such subordinate facts as will fairly present question, 127 C 456
under judgment for accounting defendants entitled before committee to prove and receive benefits of any proper credits, 128 C 442
——therefore denial of motion to amend judgment by inserting provision for deduction of certain costs and expenses not prejudicial, 128 C 442

§ 3. Review by Superior Court

§ 4. ——In General

report of, may be set aside for inferences unwarranted by law from facts, K 353
——for admission of improper evidence, K 353
may be questioned de principles on which balance was determined, 1 R 137
on remonstrance to report, may be asked if articles charged since writ, were allowed, 1 R 268
may be inquired of, if they have exceeded their commission, 1 R 413
——as to mistakes on their own principles, 1 R 413
report of auditors may be set aside for mistaken view of the law applicable to the facts, 2 D 120
decree based on facts found but not alleged is erroneous, 5 D 230
report of, when set aside, is annulled, 5 C 241
report of, accepted conditionally; remittitur for mistake, 11 C 368
presumption that oath was administered to, from form of signature, 11 C 387
court may inquire into alteration in account subsequent to report, 13 C 396
court will not pass decree on facts loosely and imperfectly found, 13 C 467.
questions of fact decided by, not reviewable by court, 13 C 563
may return case to committee to find subordinate facts, 14 C 362
findings by committee override any different inferences court above might draw, 14 C 606
from facts found by, fraud may be inferred, 17 C 28, 24 C 113
report of, may be accepted in part and recommitted as to residue, 17 C 34, 36 C 424
court will not re-examine witness once before its committee, 20 C 225
handing memorandum of counsel to committee unknown to opposing counsel is no ground for setting aside report, 20 C 226
court may supply defect in report not finding all the material facts in issue, 23 C 541
courts will not pass on evidence from which facts are found, 23 C 541
court may reject from report facts not in issue, 23 C 568
report of, not impeachable on ground that evidence has been mistaken, 24 C 585
court will not inquire whether committee has mistaken weight of evidence, 24 C 619
finding of, conclusive as to all facts properly found, 26 C 211
court will not infer facts from evidence detailed, 26 C 267
remedy, for finding based on testimony corruptly procured, 26 C 313
court may receive additional evidence to find facts reported "not proven," 31 C 380
court may take what it considers to be fair import of auditor's finding, 36 C 473
whether auditor reasoned soundly or not in finding the facts is not reviewable, 38 C 489
court cannot infer additional facts from those found and reported, 42 C 517, 43 C 320
——further facts, if necessary, to be found only on evidence, 42 C 517, 43 C 320
court cannot recommit report on ground that finding is against evidence, 43 C 452
when committee find the damages, no further hearing allowed by court, 45 C 148
court has power to recommit report for a specified object, 48 C 289
——respondents not then entitled to de novo hearing as to damages and benefits, 48 C 289
court cannot hear additional evidence upon a point heard by, 49 C 351
——if necessary committee may have opportunity to report an omitted conclusion of fact, 49 C 351
absence from finding of any special mention of averment or evidence thereunder, construed as averment not proven, 49 C 351
allowance by, of items to certain amount, not ground for rejection of, 51 C 131
——where items allowed enabled court to render just judgment, 51 C 131

——and inquiry of committee will elicit desired information, 51 C 131
committee de boundaries under statute is a special statutory tribunal, 52 C 180
——action of committee accepted and recorded is final and cannot be reviewed, except for fraud or misconduct, 52 C 180
neither Superior nor Supreme Court can find facts on mere evidence submitted by committee, 52 C 426
——committee must find fact and not submit evidence for court to find, 52 C 426
report in suit for accounting, not to be rejected if it presents facts sufficient to enable court to settle accounts equitably, 53 C 40
finding under statute that road is convenient to one man and a few neighbors not inconsistent with finding that road is not of common convenience and necessity, 55 C 408
report of committee acting under statute de discontinuance of highway, concluding the road should be "discontinued and remain closed," *held* should not be rejected for want of authority, 55 C 408
——the proper facts being found the conclusion was mere surplusage, 55 C 408
on remonstrance to report of, under statute de discontinuance of highway, court will not hear evidence which should have been introduced before a committee, 55 C 409
recommitment of cause *held* to be in the discretion of the court, 57 C 124
court should treat report of state referees the same as report from auditors or committee, 58 C 374
motion to recommit report of majority *held* a waiver of objection to majority's acting in absence of third member, 59 C 212
acceptance by the court of doings of committee in sewer assessment, *held* in the particular case unnecessary, 60 C 447
committee to establish uncertain bounds; employing surveyor of one party, 67 C 345
——misconduct of committee is ground to set report aside, 67 C 347
power of court to pass on committee's rulings where all facts are before it; in such case, recommittal unnecessary, 70 C 429
commissioners appointed to receive stock subscriptions cannot delegate power; their apportionment of stock not reviewable, 73 C 517
reaching errors of committee as to evidence; adding to finding as reported to court, 76 C 84
conclusiveness of report, 76 C 367, 484, 567
——finding that charges of administrator are reasonable is sufficient, 76 C 654
report not set aside or recommitted for harmless errors or improper findings of immaterial facts, 80 C 248
where remonstrance to report of committee showed error as to valuation of toll bridge taken by State, report was recommitted for hearing de novo, 81 C 63
report of, not set aside for failure to give evidence due weight, 82 C 460
report of, set aside for failure to consider evidence, 82 C 460
court can recommit report to obtain subordinate facts, claims of law and rulings, for purpose of appeal, 85 C 237
recommittal within discretion of court to be exercised only where it appears that party will be aggrieved, 85 C 237
benefits and damages found by a committee are conclusive, 85 C 237
court does not draw inferences from facts in committee's report; gives decision only on main facts found, 85 C 390
court can make corrections in report without rejecting it, 86 C 199
where material facts not found, report should be recommitted, 87 C 71
exercise of court's discretion in accepting report, judicial act and reviewable, 91 C 639
where report did not include subordinate facts, both trial court and Supreme Court regarded facts brought upon record by stipulation of counsel, 95 C 538
weight of evidence is for committee; court cannot retry facts, 96 C 501
——court cannot examine evidence in absence of allegation of refusal to find material fact that was undisputed or of finding material fact without evidence, 96 C 501
evidence objected to as made with view to compromise, should so appear in report, 97 C 662
——otherwise it cannot be treated as objected to on that ground, 97 C 662
neither Superior nor Supreme Court can consider claims not made at trial, 101 C 658
if facts found are such that court may conclude there was undue influence, absence of express findings that it existed of no consequence, 102 C 108
——that conveyance to child by parent was inequitable and unconscionable is a conclusion, 102 C 97
findings of state referee made on conflicting evidence, not reviewable, 103 C 279
——if they are conclusions, only reviewable on ground that they are unsupported by subordinate facts, 103 C 279
finding that benefits in assessment proceedings amounted to certain sum stands unless not supported by evidence, 109 C 212
——where value of part of tract is deducible from other figures found, it is not found without evidence, though no direct evidence supports it, 109 C 212
——visit to premises by committee as evidence, 109 C 212

——effect as regards setting report aside, 109 C 212

report can only be set aside on same basis as findings by court or jury, 109 C 212

——that is, where mistake, partiality or prejudice appears, 109 C 212

remonstrance should be overruled if trial judge concludes conclusions of committee were reasonably supported, 117 C 75

committee's figures of rents received by tenant in common conclusive on court where its finding not attacked, 118 C 12

finding by referee that subcontractor entitled to allowance for extra services in plastering contract, not reasonably indicated on plans submitted to him on which he based his bid, sustained, 118 C 325

——amount thereof reasonably found, and interest properly allowed from date of writ, 118 C 325

after amendment to conform with proof, recommittal to referee to determine whether pleadings require further evidence, proper, 119 C 681

——referee performs not a new duty but completes the original duty, 119 C 681

——and where no new issues presented by amendment and subsequent pleadings, report that no further evidence necessary justified, 119 C 681

finding that defendant guilty of intolerable cruelty was conclusion of ultimate fact based on subordinate facts, 120 C 508

——as such it can be attacked only by inquiring whether it was illegally or illogically drawn from subordinate facts, 120 C 508

——cannot be attacked by reviewing evidence to determine whether that furnishes it with legal support, 120 C 508

where complaint alleged adultery, answer denied it and referee found issues thus joined for plaintiff, claim that court could not infer adultery not specifically found, without merit, 124 C 448

court should not have taken into consideration as affecting credibility, statement in report of committee in earlier case, of file of which it took judicial notice, as to untrue testimony of defendant, 125 C 85

recommendation by state referee that judgment enter for one party is immaterial, 125 C 104

if committee used evidence in decision of any appeal not properly to be considered, that might be ground of relief, 125 C 175

where referee failed to make findings on certain issues and stated he could not give matter attention for some months, court could revoke reference and try case or recommit it to another referee, 128 C 419

report not recommitted unless such course necessary for just determination, 128 C 443

——whether or not report should be recommitted rests in court's discretion, 128 C 443

——court erred in refusing to recommit report, not in exercise of discretion but on ground that question of expenditures not open to it under judgment for accounting, 128 C 443

§ 5. ——Procedure by Party Aggrieved by Report

newly discovered evidence is no ground for remonstrance to report of, 1 R 261

remonstrance to be construed against party offering it, 5 C 267

certainty is required in remonstrance to report, 6 C 23, 17 C 560

only questions raised in remonstrance to be considered, 6 C 443

remonstrance to report of committee proper mode of correcting error in proceedings, 14 C 71

demurrer to remonstrance does not admit facts therein alleged, inconsistent with report, 17 C 563

mere informality in report of, no ground of remonstrance, 18 C 490

——as refusal to adjourn, if harmless to party, 18 C 491

what finding on remonstrance covers all issuable matter, 19 C 520, 528

opinion of committee on remonstrance that improper evidence produced no impression is inadmissible, 56 C 464

report is insufficient, if facts in effect are found; irrelevant matter no basis for remonstrance; committee on layout of private way, 68 C 113

in hearing remonstrance, court not "appellate" court as regards depositions, 76 C 567

remonstrance should state rulings with facts to show they were material and erroneous, 85 C 237, 87 C 41

issue of fact or demurrer may be joined on remonstrance, 85 C 237

facts tried by committee cannot be retried on remonstrance, 85 C 237, 87 C 42, 95 C 538

remonstrance not showing what rulings were harmful is demurrable, 85 C 237

what remonstrance must contain when only ultimate facts found, 87 C 42

in remonstrance from committee report, rulings should be specifically stated and sufficient facts to show their materiality, 87 C 42

——they can then be denied or demurred to, 87 C 42

right to include rulings on evidence in remonstrance not waived by failure to supply committee with exceptions, 87 C 241

can deny amendments to remonstrance that reiterate grounds already denied, 87 C 241

mere statement that committee promised to give further hearings and did not, insufficient; must show some injury therefrom, 87 C 241

committee determines weight of evidence; remonstrance is demurrable if correctness of determination is questioned, 87 C 242

allegation that facts found without or contrary to evidence, another way of saying that finding is contrary to weight of evidence, 87 C 242

discretionary with court to order remonstrance made more specific, 87 C 242

if committee finds damages by wrong rule, file remonstrance and have report recommitted, 91 C 198

should state in report relevancy and materiality of excluded question and facts necessary for review; remonstrance does not supply deficiency, 92 C 193

when remonstrance should submit the evidence, demurrable if it does not, 93 C 146

if no facts appear on which committee could have based apportionment, demurrer to remonstrance sustained, 95 C 336

if committee fails to make a finding on material matter, move to recommit, rather than file remonstrance, 95 C 337

method of procedure by party aggrieved by report of, stated at length, 97 C 663

——demurrer to remonstrance admits the rulings therein alleged, 97 C 662

remonstrance should incorporate rulings on evidence, 98 C 563

necessary allegations in remonstrance to report, 98 C 565

referee's failure to make finding can only be corrected by motion to recommit his report, 101 C 658

——cannot be accomplished by appeal, 101 C 658

remonstrance to report must state specifically the errors complained of, 103 C 279

report conclusive unless facts are found without evidence or facts admitted or undisputed are not found, 103 C 532

——remonstrance that facts found "without any sufficient evidence" to support them not good, 103 C 532

——fact not necessarily undisputed because testimony as to it is uncontradicted, 103 C 532

——how facts as to occurrence before a committee may be brought before court, 103 C 532

——notes of stenographer as evidence, 103 C 532

——death of committee not determinative; rehearing de novo might be ordered, 103 C 532

——remonstrance as to rulings on evidence should contain what, 103 C 532

——harmless error of no consequence, 103 C 532

——committee may testify on hearing on remonstrance, 103 C 532

rules concerning remonstrance must be strictly followed; time limit; grounds for remonstrance, 108 C 515

remonstrance only way to contest acceptance of report, 108 C 515

——various grounds of remonstrance stated, 108 C 515

where remonstrance seeks corrections of findings, demurrer that it presents questions of fact, not proper, 114 C 531

——finding a fact without evidence or failing to find an admitted or undisputed fact is error in law, 114 C 531

——if corrections are clearly immaterial or irrelevant, demurrer lies but should be sustained only in clear case, 114 C 531

remonstrance must specifically state errors which it is claimed were committed at hearing before committee, 117 C 75

granting or denial of motion to recommit to referee for additional findings within discretion of court reviewable only for abuse, 117 C 138

as motion to recommit did not allege that plaintiff expressed desire to have claims stated by referee, he cannot rest motion upon latter's failure to do so, 117 C 141

——nor did motion allege that referee overruled his claims of law or ask for statement of rulings, 117 C 141

reopening case before state referee for receipt of additional evidence analogous to petition for new trial, 118 C 291

——matter rests in discretion of court which will be reviewed only for abuse, 118 C 291

——proper finding necessary for review, containing summary of proposed evidence, and evidence offered at hearing, 118 C 291

comments on correct procedure to secure review by a court of actions and rulings of committee or referee, 118 C 350

⚖——where referee makes definite finding of amount of damages for land taken, party may remonstrate on ground that there was no evidence to support it, 118 C 350

⚖——remonstrance alleging damages "excessively high and contrary to evidence" improper, 118 C 350

⚖——remonstrance that referee failed to find certain facts, should allege that these facts were undisputed when this was so, that court may have basis to add them to finding, 118 C 350

——price paid by State for contiguous land purely evidential and has no proper place in report, 118 C 350

——facts descriptive of property material only as bearing on finding as to damages, 118 C 350

——if referee has no reason to believe that any question will arise as to rulings or conclusions entering into ultimate finding he may confine report to such finding, 118 C 350

——otherwise he may and should find subordinate facts, 118 C 350

——in former case party aggrieved has right to have subordinate facts added to finding, 118 C 350

——and that party did not request them of referee does not preclude this right by way of remonstrance, 118 C 350

——if facts are admitted or undisputed, party may ask trial court itself to add them to finding, 118 C 350

—otherwise he should seek recommittal of report, 118 C 350

——remonstrance should either state particular facts to be added or indicate them with reasonable certainty, 118 C 350

——remonstrance in order to present ruling on evidence, should state it as is required in findings of trial court on appeal, 118 C 350

——remonstrance in present case defective but demurrer to it failing to specify a sufficient ground for so holding should have been overruled, 118 C 350

remonstrance that referee has found facts "without evidence, against evidence and upon improper evidence," followed by recital of all material facts found, violates good practice and awakens distrust, 119 C 603

——allegation that facts found against evidence and upon improper evidence another way of saying contrary to weight of evidence, 119 C 603

——such allegation not proper ground of remonstrance as court cannot retry facts, 119 C 603

court cannot, upon remonstrance, retry issue of fact, 122 C 455

——errors of judgment as to the value of property cannot be corrected, 122 C 455

——remonstrance should specifically allege respect in which error is claimed, 122 C 455

remonstrance to report of state referee to properly present ruling on evidence, should state ruling as in finding made for appeal to Supreme Court, 124 C 445

in divorce action for adultery defendant in remonstrance should have stated that evidence of no sexual relations was not sufficient, because of presumption that children born in wedlock are legitimate, had she desired to press point, 124 C 447

that plaintiff answered remonstrance instead of demurring would not preclude trial court from finding it insufficient in law, 129 C 295

§ 6. Appeal to Supreme Court

recommendation of, as to mode of division, may be revised by Supreme Court, 14 C 361

acceptance of committee's report is a sufficient finding of facts by court, 29 C 589

neither Superior nor Supreme Court can find facts on mere evidence submitted by committee, 52 C 426

appointment of a committee to appraise property condemned for a public use, is a judgment; appeal lies, 85 C 663

rulings and decisions of committee erroneous as matter of law reviewable by Supreme Court, 86 C 229

stenographer's notes before committee should be part of record if Supreme Court is to assert error in trial, 87 C 242

stipulation of facts not in committee's report, while irregular, accepted, 95 C 537

court cannot retry issues of fact; hence on appeal finding has no place, 95 C 538

claims of fact not supported by referee's report cannot be made on appeal, 101 C 534

neither Superior nor Supreme Court can consider claims not made on trial, 101 C 658

on appeal to Supreme Court from judgment on report, trial court's conclusions and inferences of no consequence, 102 C 96

——question is, does report support judgment, 102 C 96

where appeal is based solely on report, evidence is not before court, 109 C 212

remonstrance should be overruled if trial judge concludes conclusions of committee were reasonably supported, 117 C 75

——when appeals are taken, it is duty of Supreme Court in turn to determine if evidence reasonably supported committee's finding, 117 C 75

——primary question is then effect of evidence; that trial judge made use of evidence not properly to be considered not vital, 117 C 82

——if committee used evidence not properly to be considered, that might be ground for relief; but such conduct must find support in report or be stated in remonstrance, 117 C 82

to make available to court exhibits offered before referee, plaintiff should have annexed them to remonstrance in connection with excerpts of evidence, 117 C 138

——where this not done, no basis in record for use on appeal to Supreme Court, 117 C 138

acceptance of appraisers' report by Superior Court in condemnation proceedings is final judgment from which appeal lies, 117 C 230
where referee makes report and court hears no evidence, no basis on which court can make finding; can only correct report, 128 C 416
for Supreme Court to determine whether there were undisputed facts in evidence before committee and add them to report, it must have evidence before it, 129 C 295
remonstrance intended to secure recommittal must be accompanied by evidence; otherwise Supreme Court cannot review ruling of trial court denying relief of this nature, 129 C 295

COMMON CARRIERS

See Carriers

COMMON COUNCIL

See Municipal Corporations § 11

COMMON COUNTS

See Pleading § 10

COMMON LAW

extent of adoption of common law of England in this State, 5 D 189, 5 C 168, 21 C 181, 72 C 151, 78 C 133, 93 C 526
prevails in Connecticut as to definitions of crimes and their punishment, 3 C 114, 70 C 109
prevails in District of Columbia, 33 C 264
adaptation to changing conditions, 69 C 157
selling of liquor lawful and open to all at common law, 81 C 534
fellow-servant rule is part of American common law, 82 C 352
all infamous crimes, not merely those known to common law, affect credit of witnesses, 95 C 500
how far applied by our courts, 99 C 432, 118 C 376
——they may declare and punish common-law crimes, 99 C 432
——solicitation to commit crime, 99 C 432
development of common-law concept of public easement in a highway, 104 C 610
——of abutters' rights in highway as to light, air and view, 104 C 610
usage established as general custom by uniform practice from time immemorial as part of common law, 114 C 527
while Connecticut has not formally adopted common law, it has practically done so with such exceptions as circumstances require, 115 C 393
——State as successor to prerogative of Crown in priority of payment of debts due it from insolvent, 115 C 393
repeal of statute making owner of automobile liable for injury resulting from incompetence of driver to whom he has loaned it *held* not in derogation of adoption of common-law rule on this subject, 116 C 515
can never be static, must always be developing, but development must be orderly procedure, 116 C 526
merely because it seems unjust that particular plaintiff should not recover, or that "social desirability" dictates that he should, affords no basis for liability, 116 C 526
unless application and reasonable development of accepted principles of law justify recovery, the remedy, if any, rests with Legislature not the courts, 116 C 526
cannot be said with certainty that English common law denied Crown right to review of criminal proceedings, 118 C 373
definition of common law, 118 C 378
information acquired by physicians in their professional capacity has never been privileged at common law, 120 C 161
common-law warranty bound grantor, in case of breach, to recompense in kind, 123 C 120
——it has been generally replaced in this country by covenant of warranty, 123 C 121
definition of breach of peace, 126 C 5
common law is constantly in process of gradual but steady evolution, 127 C 688

COMMON PLEAS COURT

See Court of Common Pleas

COMPOSITIONS WITH CREDITORS

composition notes; surety; failure of all creditors to sign; defense, 28 C 153
——fraud on surety having no knowledge of preference, 28 C 154
——void as to other creditors for secret preference, 28 C 154
any fraud makes composition deed void, 39 C 553
——or contract by one creditor for a preference, 39 C 554
——and works a forfeiture of such claim, 39 C 554
composition deed is in spirit an agreement between creditors also, 39 C 556
——representation by creditor that debt is less than it really is, is not fraud per se, 39 C 557
——but if so, creditor is not estopped from setting up debtor's fraud to avoid, 39 C 557
where no compromise with all creditors, failure of debtor to perform verbal promise to settle with all on same basis not in itself fraud, 43 C 160
composition proceedings did not affect attaching creditor's right to judgment in pending suit for full amount of debt, limited to property attached, 45 C 499
creditor could show that he signed composition for amount of unsecured claims and that agreement not intended to apply to another secured claim, 46 C 569
in composition agreements the utmost good faith is required, 49 C 108
——secret agreement to give plaintiff advantage is void, 49 C 107
——that plaintiff indorsed composition notes does not help his case, 49 C 108
debtor's note to creditor for balance due in consideration of his signing composition agreement is void as between them, 49 C 532
——whether if debtor paid such note he could recover back, quaere, 49 C 533
secret promise to pay one creditor larger sum than others as a condition of accepting compromise is void, 52 C 464
indorsee of note reserved all rights against indorser in signing composition deed with maker; indorser not discharged though only liable as surety, 58 C 526
parol evidence *held* inadmissible to vary composition agreement, 59 C 186
——condition that agreement was to be void unless signed by all unsecured creditors, *held* not implied by the language so as to render the evidence admissible, 59 C 187
compromise with single creditor; same rules apply as though there were several; good faith required, 77 C 334

COMPROMISE AND SETTLEMENT

See also Accord and Satisfaction; Evidence § 88

equity will not relieve where plaintiff made settlement in ignorance of motion in arrest of forgery prosecution, 1 R 308
compromise of doubtful claim is sufficient consideration to support a promise, 14 C 12
bona fide compromise of action which might not be sustained at law is valid, 29 C 239
family settlement valid discharge of half of debt owed by son; consideration sufficient, 30 C 43
written agreement de settling accounts, with cash consideration, *held* valid, 67 C 400
a compromise agreement by which each party undertakes to do certain things for benefit of other is upon a valuable consideration, 76 C 126
is supported by sufficient consideration if it is to settle unliquidated claim, 82 C 607
compromise not an admission that terms do justice, 83 C 243
no duress found as to agreement in consideration of which breach of promise and bastardy actions withdrawn, 84 C 377
a guardian is permitted to compromise claims of the ward, 84 C 595
claims payable in land may be compromised in cash, 85 C 50
favored when made in good faith to avoid litigation, 85 C 50
promise to forbear doing what one cannot legally do, no consideration for, 85 C 53
when executor can compromise claims and court's power, 86 C 462
when receiver can compromise claims and court's power, 88 C 571
trustee can compromise claims when authorized to collect in any way he saw fit, 89 C 645
a valid lien is not lost by compromising claim, 91 C 57

acceptance of compromise settlement of claim from automobile repairs ends repairman's lien, 99 C 262

voluntary settlement of claim does not have effect of fixing legal liability so that one causing injury to employee is liable to employer who has paid compensation, 101 C 200

promise to send check in settlement of case must be performed within reasonable time, 107 C 491

agreement to pay claim in full with costs and expenses not inadmissible as offer of compromise, 107 C 491

family settlements are highly favored and will not be disturbed for ordinary mistakes, 114 C 325

——such settlement upheld where it concerned merely division of rentals among heirs of deceased without regard to legal title to properties, 114 C 325

——so, though there was no dispute between parties, 114 C 325

agreement in settling of appeal in condemnation adjusting damages, *held* to be a compromise, 116 C 606

avoidance of litigation by compromise adjustments is always to be favored, 117 C 147

compromise agreement, if free from fraud, mistake or undue influence, is conclusive between parties, 119 C 681

when parties compromise and fairly agree as to amount due, debtor executes and creditor accepts note therefor, it is binding on them and maker, when sued on it, cannot utilize defenses which would have been available in suit on which compromise was founded, 119 C 681

settlement of will contests and family disputes not in contravention of public policy and when fairly arrived at is favored both in law and equity, 124 C 625

COMPTROLLER

See Public Officers § 14

CONDEMNATION

See Eminent Domain

CONDITIONAL LIMITATION

See Estates on Condition; Wills § 30

CONDITIONAL SALES

See Sales § 20

CONDITIONS

See Contracts § 23; Deeds § 10; Estates on Condition; Wills §§ 37, 45

CONDONATION

See Divorce § 8

CONFESSIONS

See Evidence § 89

CONFLICT OF LAWS

§ 1. In General
2. Contracts
3. Torts
4. Transfer of Property
5. Domestic Relations
6. Bankrupt and Insolvent Laws
7. Miscellaneous Cases

See also Bankruptcy; Constitutional Law § 3; Corporations § 19; Estates of Deceased Persons; Executors and Administrators § 17; Foreign Law

§ 1. In General

authority of international law acknowledged here, 4 D 186

a defense on merits good by lex loci is good in lex fori, 5 D 323

foreign law given effect in this State, when, 6 C 519, 14 C 586

debts as a rule have no situs but follow owner, 14 C 562, 586, 16 C 134, 35 C 307

laws of other State may be enforced though ours are more equitable, 14 C 592

lex fori controls the form of remedy and proceedings, 17 C 510

foreign law if contrary to our policy of no force here, 26 C 183, 87 C 461

notice of suit, or appearance which presupposes notice, is indispensable prerequisite to rendition of any judgment which courts of another State are bound to recognize, 28 C 135

questions of evidence are governed by lex fori, 36 C 46

the giving effect to laws of other State is wholly a matter of comity, when, 44 C 303

if two statutes can be reconciled they have concurrent operation, 62 C 498

comity does not require recognition of transaction, which, though consummated elsewhere, rests on violation of our law, 68 C 542

admissibility of evidence determined by law of State where action is brought, 81 C 433

law of place that parties intended to govern, does govern, unless contrary appears, 81 C 539

on demurrer Massachusetts law presumed same as Connecticut, 82 C 352

law of place where action originated governs merit and right of action, 82 C 352

whether our courts can enforce rule of damages of other States, quaere, 83 C 278

application of rule that sovereign cannot adjudicate what he cannot enforce, 83 C 487

foreign decrees recognized only so long as conditions remain unchanged, 83 C 492

law of other State presumed like ours or like common law, 86 C 235

exception to rule of enforcement of rights arising in another State, 87 C 461

a statute held penal by courts of another State will be so held here, 87 C 461

whether limitation fixed by a foreign statute is applicable to action brought under it here, 87 C 466

a federal statute, where it applies, is exclusive of any other remedy, 87 C 634

comity rests on more than courtesy and good will, 88 C 690

the sufficiency of sister State's records to prove that a judgment was rendered must be determined by its laws, 95 C 167

where law of another State undetermined, it is presumed to be same as our own, 104 C 169

criminal laws of one State have no extraterritorial effect, 105 C 374

when relevant and material, foreign statute should be incorporated in the finding, 106 C 264

what laws are penal in international sense and so not enforceable in other States, 108 C 386, 436

——distinction so made, while not controlling under constitutional provision requiring full faith and credit to judgments of another State, is persuasive as to obligations created by foreign statutes, 108 C 386

——general rule that we adopt construction of foreign court as to its own statutes not applicable to determining whether statute is penal in international sense, 108 C 386

——this is matter of general jurisprudence not controllable by any State, 108 C 386

court may assume, unless contrary is shown, that law of foreign State is same as home State, 109 C 268

duty of courts of State to protect its residents, 110 C 44

giving effect to laws of another State is act of comity not of right, 111 C 383

where claimant has had day in court in another State, he is not entitled to it here, 111 C 383

one State cannot punish criminal offenses committed in another, 113 C 288

dissimilar provisions in laws of another State not sufficeint ground to refuse their enforcement here, 115 C 165

——this will be refused only when it violates some fundamental principle of justice, prevalent conception of good morals or deep-rooted tradition, 115 C 167

where law in another State is not settled, presumption is that its own law is like our own and in accordance with general current of authority, 117 C 118

where cause of action arising in another State is asserted in our courts, laws of that State determine all matters of substance, but matters of procedure governed by our own law, among these being rules of evidence, 119 C 83

——exception where remedial matters are so much of the substance that they should be given effect, 119 C 83

——provision of New York statute making certificate of superintendent of banks presumptive evidence of facts therein stated has no application to action brought here, 119 C 83

state law dealing only with state matters is valid though it may incidentally affect interstate commerce, unless it comes in conflict with some valid statute of the United States on that subject, 122 C 275

unless some wrong recognized by law is done, one resident of a State may sue another in the courts of a different State and there avail himself of the remedies afforded by its laws, 122 C 584

——fact that both parties are residents of same State not enough to justify issuance of injunction against such suit; must be unconscionable disadvantage, 122 C 584

——injunction refused to restrain suit in Missouri courts by Connecticut resident to whom claim against Connecticut insurance company had been assigned by Missouri resident to prevent removal to federal courts for diversity of citizenship, 122 C 584

——though assignee could not sue on such an assignment here (587) he could in Missouri, and our public policy could not be imposed on latter State nor our statute given extraterritorial effect, 122 C 584

——and since policy was issued in Missouri to resident there and beneficiary was resident there also, no impropriety in suit being brought there, 122 C 584

error cannot be based on failure of court to consider decision upon similar state of facts in another jurisdiction unless law of that jurisdiction is involved in issues, 127 C 607

——still less upon its failure to consider facts involved in such decision, 127 C 607

§ 2. Contracts

as a rule a contract if valid where made is valid everywhere, 5 D 320

lex loci contractus governs validity and construction, 5 D 320

lex fori governs remedy, 5 D 320, 4 C 48, 45 C 109

lex loci contractus governs as to performance, 5 D 322

a defense on merits, if good by lex loci is good in lex fori, 5 D 323

——Vermont law; tender here is a good defense, when, 5 D 320

lex loci to govern in construing contracts, unless contract shows contrary intent, 3 C 255, 473, 13 C 257, 15 C 546

principle of lex fori is applicable to form of execution, 3 C 526

lex loci applies to contract made in other State for services there rendered, 4 C 520

lex fori not to prejudice party's rights under foreign contract, 14 C 505

rights of citizens of other State litigating here are governed by lex loci contractus, 14 C 589

contract of guaranty here on note made in other State; law of this State governs, 40 C 236

contract de partnership made in Massachusetts, business carried on here; *held* whether partners or not, governed by Connecticut law, 49 C 240

lex loci governs as to construction and effect of mortgage of real estate, 51 C 66

——as to realty lying in, and mortgaged in New York but subsequently brought into Connecticut by change of state line, 51 C 66

New York law applicable to a suit to recover on a bill of exchange payable and accepted in New York, 54 C 400

contract of mutual benefit association of Massachusetts with person there domiciled construed by its laws, 64 C 240

contract to be performed in a foreign State is to be construed by its laws, 66 C 306, 68 C 540, 73 C 132, 80 C 445

delivery of contract in this State by agent does not give it validity, if, under our laws, principal could not authorize agent here, though attempt was made to give him authority in the State of the owner's domicil, 68 C 541

contract good where made good everywhere; limits of doctrine, 76 C 518

validity of contract depends on law with reference to which it is made; lex loci celebrationis determines as to trust in real estate situated there, especially if all interested parties are domiciled there; trust ex maleficio, 81 C 433, 89 C 373

action for breach of oral promise of grantee

of land to hold it in trust is personal, and right follows party entitled, 81 C 433
law where parties intended to bind themselves, prevails, 81 C 539
remedy and judicial proceedings for breach regulated by law of place where action is brought, 85 C 141, 86 C 494
contract of member of benefit society construed by law of State of incorporation, 82 C 315, but see 87 C 644
general rule in case of conflict with policy of State where action is brought, 87 C 381
place where contract is made is place where final steps to make it effective are taken, 87 C 644
jurisdiction of State where made, 89 C 373
law of State, where obligation of surety is delivered, determines liability, 90 C 415
New York law governs wife's implied authority to order goods consumed while living in New York, 90 C 690
Workmen's Compensation Law of another State is enforceable here, unless remedy is entirely enforceable in home tribunal, 91 C 524
our Workmen's Compensation Act attaches when employer comes here under contract of employment made in another State, 91 C 524
Illinois contract construed by laws of that State, 91 C 553
Connecticut Compensation Act governs where contract made with sole and specific reference to job to be performed here, 92 C 368
agreement made in another State to be performed here is construed by our laws, 95 C 102
agreement establishing trusts as to real estate here, 95 C 102
Workmen's Compensation Act of foreign State in which contract of employment is made governs injury here when, 99 C 458
——our law governs where sole and specific object of employment is to perform work here, 99 C 458
where contract made in this State to be performed in another, our Workmen's Compensation Act governs; converse of this rule true under certain conditions, 103 C 101
acceptance of offer of re-employment in Connecticut after discharge in Massachusetts makes Connecticut Workmen's Compensation Act applicable, 103 C 101
rights under mortgage governed by law of State where land lies, 103 C 503
provision in contract that it shall be "interpreted and enforced in accordance with laws of New York" is valid if made in good faith, 103 C 553
presumption that contract is to be governed by law of place where it has beneficial operation and effect, 104 C 559
clause that contract "made and executed in accordance with law of Pennsylvania"; *held* governed by law of Connecticut where it was to be performed, 104 C 559
rights of holder of mortgage on land in Florida to sue persons who agreed to reimburse owner of equity for all expenses incurred in handling property are determined by Florida law, 106 C 684
——so effect of declaration of trust by owner of equity in favor of himself and them, 106 C 684
liabilities in contract governed by place where made unless it is to be performed or have beneficial operation elsewhere or made with reference to law of another jurisdiction, 108 C 333
——rights of action on contract arising elsewhere enforced unless they contravene our law or public policy, 108 C 333
——statute making person renting automobile to another liable for damage caused by it annexes contract right to agreement of rental, 108 C 333
——hence enforceable here though accident happened in another jurisdiction, 108 C 333
contract for services to be performed outside State is governed by laws of State where contract was made, 111 C 693
lease made in New York of apartment there located governed by law of that State, 111 C 697
where insurer was organized and located in New York and policy was issued and accepted by resident there, construction and effect of policy to be determined by law of that State, 117 C 437
suit by superintendent of banks of New York to enforce assessment on Connecticut stockholders under New York statute, 119 C 83
——not sufficient reason for our courts to decline to enforce the right because under our laws no similar right exists, 119 C 83
——our courts do not close their doors unless help would violate some fundamental principle of justice, some conception of good morals, some deep-rooted tradition of common weal, 119 C 83
liability policy issued by Massachusetts corporation to resident of that State construed by its laws even though action is brought under separate extraterritorial provisions, 120 C 645
separation agreement made in New York by parties there domiciled to be governed in its interpretation by laws of New York, 121 C 286
validity and effect of chattel mortgage as affecting rights of purchaser from mort-

gagor depend on law of State where chattel was at time mortgage executed, 122 C 100
——if taken into another State without consent of mortgagee, latter's right not affected by dealings therein, 122 C 100
——New York rule de retention of possession applied where mortgage made there and chattel moved here, 122 C 100
contract made in this State between Connecticut corporation and dentist residing here is to be construed in accordance with law of this State, 123 C 4
where contract had to be accepted by corporation at home office in New York before becoming effective, place of contract was New York, 124 C 602
plaintiff being Massachusetts corporation and sales of liquor being made there, Massachusetts and federal rules govern, 126 C 504

§ 3. Torts
tort actionable in one State may be brought in another, if not against its policy, 82 C 352, 87 C 466
suit may be brought under our law if decedent was negligently killed elsewhere, 83 C 278
Federal Liability Act does not apply to injuries received in interstate commerce by water, 89 C 368
in action for tort, the place of injury determines the right of recovery, 89 C 372
action lies here by receiver of telegram in another State for negligence in transmitting, 91 C 35
tort committed in another State, gives action here unless public policy forbids, 103 C 390
in action for tort committed in another State, damages to be measured by law of place of injury, 103 C 390
procedure in enforcing action for tort in another State determined by law of the forum, 103 C 405
nature of cause of action determined by law of place of injury, 103 C 405
——damages in contract not determined by law of forum, 103 C 407
tort committed in one State creates right which may be sued on in another, unless its public policy forbids, 107 C 174
——law of place where tort committed determines existence of cause of action; law of forum determines remedy, 107 C 174
——our law as to survival of cause of action pertains to substantive right, not merely to remedy, 107 C 174
——hence if cause of action abates on death of wrongdoer in State of injury, no recovery permitted here, 107 C 174
——but so much of statute as provides that pending action shall not abate pertains to remedy and hence if action once begun here it may be continued after death of wrongdoer, 107 C 174
law of place where tort committed governs existence of cause of action, 108 C 333
statute of Massachusetts giving damages for wrongful death assessed according to culpability will be enforced here, 108 C 386
statute of another State not penal and not contrary to our laws, policy or morals or injurious to public rights or interests of our citizens will be enforced here, 108 C 436
——New York law giving action for wrongful death, 108 C 436
——as under it, executor or administrator acts only as agent of beneficiaries he will be permitted to sue here by comity, 108 C 436
——as that law puts burden to show contributory negligence on defendant, our courts will follow it, 108 C 450
——so damages are to be assessed in accordance with its provisions, 108 C 450
existence of cause of action for tort, as well as measure of damages, determined by law of State where committed, 110 C 528
counterclaim for malicious prosecution by bringing suit on same cause of action in another State is to be judged by its laws, 110 C 528
tort committed in one State creates a right of action that may be sued on in another unless its public policy forbids, 112 C 58
remedy under New Jersey law is part of cause of action in this State arising under New Jersey statute, 112 C 58
action brought to recover for injuries suffered in automobile collision in another State, governed by its laws, 113 C 304
law of Connecticut applied in determining whether failure of Massachusetts operator of automobile to indorse his license would defeat recovery, 114 C 72
plaintiff guest in defendant's car when accident occurred in Rhode Island; he could recover on proof of ordinary negligence under law of that State, 115 C 490
where accident happened in Massachusetts, law of that State governs as far as substantive elements necessary to recovery are concerned; guest case, 116 C 545
assumption of risk must be specially pleaded; this being rule of procedure it applies despite fact that accident happened in Massachusetts, 116 C 545
where accident happened in Massachusetts, substantive elements necessary to recovery are governed by law of that State, 117 C 430
——burden of proof as to procedural matter governed by law of forum, 117 C 434
nonresident coming into this State to assert right to recover damages for personal in-

juries by negligence of defendant, submits subject matter of action to our courts, 117 C 683
——nothing in our public policy forbids his bringing action here against another nonresident, 117 C 683
——service may be made upon nonresident operator of motor vehicle under statute providing for such service on commissioner of motor vehicle, 117 C 683
substantive law of foreign State governs where accident happened there, 118 C 156
where accident happened in another state, question whether driver is an employee of another is determined by law of that State, 129 C 123
——involves substantive element necessary to recovery against that other for driver's negligence, 129 C 123
——salesman driving own car in Massachusetts to call on customers was not acting as employee, 129 C 123

§ 4. Transfer of Property

validity of assignment made in New York without notice to debtor, 14 C 145
assignment of debts against corporation of this State, if valid where made is valid here, 14 C 559
personal property is subject to lex domicilii, as to disposition, distribution, and succession, 16 C 132
deed of land in other State executed according to its law has same effect here as there, 25 C 319
title by delivery is valid here, if valid by law of place of delivery, 28 C 40
debt for liquors sold in other State to be brought here in violation of law is not legal here, 28 C 521
——bill of sale of goods given as payment of such liquors is good here, 28 C 521
lex loci applies to conduct of parties as affecting validity of contract, 32 C 248
——retention of possession by vendor is in New York only evidence of fraud, 32 C 248
effect of transfer to New York creditor to evade Connecticut insolvent law, 32 C 249
title to personalty if valid where acquired, is valid everywhere, 33 C 136, 39 C 181
——title accruing after owner's decease is subject to claims of foreign creditors, 33 C 137
assignment of debt by Massachusetts creditor is good there without notice to debtor, 35 C 306
——creditor here cannot afterwards factorize debt so assigned, 35 C 306
our rule de retention of possession by vendor is inapplicable to foreign contracts, when, 39 C 182
transfer of personalty wholly within this State; foreign laws; comity, 44 C 203
conditional sale by agent; delivery in Connecticut; payment to be made in Connecticut; *held* law of Connecticut governed, 49 C 155
debt due in New York under a policy of insurance from a company having an agent and property in New York has its situs there, 56 C 182
assignment valid in another State is valid here, 56 C 182
an assignment made for the benefit of creditors in another State is under the exclusive jurisdiction of courts of that State, 56 C 182
——residents of another State bringing action here on such assignment acquire no rights which they would not have had in their own State, 56 C 182
common-law assignment made in New York *held* valid here, and transfers debts due here, 58 C 324
——though for the benefit of preferred creditors, 58 C 325
common-law assignment for benefit of creditors good where made is good here, 61 C 154
——though debt assigned was subsequently attached here, 61 C 154
——fact that attaching creditor was a citizen of this State *held* not to affect, 61 C 153
what law governs order for payment of share of estate in settlement here, 68 C 542
each State determines descent and transfer of its lands, 70 C 211
voluntary conveyance of goods by owner at his domicil, in form sufficient there and also at common law, is effectual to transfer title, though they be in another State, unless statutes on policy of that State forbid, 71 C 346
what law governs assignment of insurance policy, 74 C 463
sale of liquor on order solicited here but sent to another State is sale there, 74 C 534
transfer of personal property good where made is good everywhere; limitations of doctrine, 76 C 518
on death of owner of personal property, it passes under the law of his domicil, 76 C 617, 77 C 644
sale of goods, f.o.b. in another State, to be paid for by vendor's draft, is sale there, 80 C 509
where goods are transmitted to vendee in this State at his expense, on order sent to Iowa with provision for delivery to carrier there, sale is made there, and, though goods are not marked in accordance with our statute, vendee cannot refuse them, 81 C 111
deed executed in New York of Connecticut land presumed to be done with New York law in mind; cannot pass greater interest than our laws permit, 81 C 539

law of domicil determines testacy, 81 C 681
deed of life estate executed where it would convey fee presumed to do so here, 83 C 360
our law governs remedy for goods made in New York and ordered orally here subject to change, although later confirmed in New York by writing, 85 C 140, 86 C 494
law where goods sold and credit given controls application of payment, 86 C 234
proof of will in another State will not pass real estate here, 86 C 707
court cannot give declaratory judgment as to rights in land in another State under will of Connecticut testator, 98 C 549
——as to say who was meant by devise to "——Braman," 98 C 549
where sale is made in Texas effect of retention of possession by seller as indicating fraud is determined by Texas law, 99 C 587
Massachusetts Personal Property Act not applicable to situation where consignee of shoes in that State made wrongful sale to Connecticut buyer, 102 C 38
property in this State owned by nonresident will be distributed as directed in his will, or by laws of State where he died, if not against our policy or prejudicial to rights of local creditors, 105 C 192
——succession tax as affected by actual situs of personal property rather than domicil of deceased, 105 C 193
——tangible and intangible personal property distinguished, 105 C 193
our courts will not determine questions arising under a foreign will, unless the record clearly shows that they have not been adjudicated elsewhere, 108 C 611
devolution of personal property under will of person domiciled in another State as well as of land there determined by its laws, 108 C 617
——hence ordinarily our courts will not construe that will, 108 C 617
——and construction made there is binding here, 108 C 619
real estate in another state cannot be distributed here except by order of court there situated, 110 C 36
——that court has right to distribute according to its laws, 110 C 36
——hence real estate there not to be regarded in distributing husband's or wife's one-third share here, 110 C 36
——court could not enforce distribution of it and hence will not decree it, 110 C 36
rights of heirs and legatees in personal property determined under law of State where testatrix died, 111 C 463
where, under the law of another State requiring notice of bulk sales, its courts had given a remedy in equity against the purchaser in default of notice, that remedy became a part of the creditor's rights and enforceable here, 112 C 58
——the contract of sale being made and to be performed in that State was governed by its laws, 112 C 60
executor's duty to pay mortgage on land specifically devised; testator presumed to have had law of domicil in mind when he devised land in Massachusetts, 113 C 62
construction of will of resident of this State as to real estate in Massachusetts will be accepted in that State, 113 C 62
our succession tax law applied where transfer in contemplation of death was made in New York with a New York trustee and personal property was there situated, 114 C 208
right of inheritance of personal property determined by law of deceased's residence, 115 C 165
whether property in hands of ancillary administrator of nonresident's estate shall be administered here or remitted to administrator in State of deceased's residence rests in discretion of our courts, 127 C 107
ordinarily rights in personal property created by will are determined by law of testator's domicil at his death, 128 C 392
——testator is presumed so to know, 128 C 393
unless terms of will indicate contrary intent, it is to be interpreted by law of testator's domicil, 128 C 393
——mere fact that it was drawn by lawyer of another State insufficient to show contrary intent, 128 C 393

§ 5. Domestic Relations

extraterritorial effect of modified decree de custody of children in divorce, 83 C 479
contract of alimony, if good where made, enforceable here, 87 C 377
foreign divorce judgment recognized on ground of comity, 88 C 689, 91 C 608
difference in time for desertion, of no significance, 88 C 689
legitimatization of children of bigamous marriage recognized, 90 C 164
decree for separation a mensa et thoro recognized here, 91 C 608
husband entrusted with wife's funds in Kentucky; *held* law of Massachusetts, as place of their domicil, governed, 104 C 169
law of forum determines question of domicil as well as other conditions governing granting of divorce, 108 C 292
——as right of wife to acquire domicil apart from husband, 108 C 292
——so as to what constitutes adultery, law of foreign country disregarded, 108 C 292
effect of separation agreement, approved by Italian courts, upon divorce action in this State, 108 C 292

divorce secured in another State by resident of Connecticut there temporarily for that purpose is without effect here, 110 C 348
——if residence there is actual and bona fide, divorce would be recognized here, 110 C 348
——even though purpose was to take advantage of divorce laws of that State, 110 C 351
right of wife to demand support of husband is transitory, 111 C 124
——statutes have no extraterritorial effect, 111 C 129
——but court may presume generally recognized common-law right is in effect in certain State, 111 C 129
validity of marriage determined by place where it was contracted, 119 C 194
——cannot be declared void unless void under laws of that place, 119 C 194
——but where residents of Connecticut went through mere form without intent to assume relationship in another State, in absence of showing to contrary, court assumes marriage void by its laws, 119 C 194
——that courts of that State could not so declare, does not alter result, 119 C 194
whether divorce should be granted depends on law of residence of parties, 119 C 197
what is necessary to constitute domicil sufficient to give court of another State jurisdiction to grant divorce, 119 C 612
——where party went there with the intention of remaining permanently after securing divorce if he could find work but did not find work and left as soon as it was granted, it was held he did not have sufficient domicil to give court jurisdiction, 119 C 612
separation agreement made in New York, valid in Connecticut, 121 C 281
decree of alimony, where award is not within power of court to rescind or alter and has become vested, falls within full faith and credit clause of Constitution, 122 C 155
——constitutional provision requires only that the courts of other States give effect to it by ordinary remedies appropriate to action on judgment, 122 C 155
decisions of Supreme Court of United States de the giving of full faith and credit by one state where a spouse resides to decree of divorce obtained by other spouse in another state, reviewed, 128 C 628
decision of Florida court that husband had acquired residence in that state sufficient to comply with its laws concerning jurisdiction over divorce is binding on courts of this state, 128 C 628
——service of process on wife by ordinary mail, particularly where she entered special appearance and contested issue of jurisdiction, sufficient, 128 C 634

§ 6. Bankrupt and Insolvent Laws

delivery in other State as payment in full by insolvent here; preference, 28 C 42
attachment here is not dissolved by foreign insolvency proceedings, 28 C 287
foreign discharge from insolvency; qualified judgment in rem on property attached here, 28 C 287
effect of transfer to New York creditor to evade Connecticut insolvent law, 32 C 249
title of foreign assignee in insolvency to debt due by citizen here to foreign corporation, 44 C 203
——when same had been attached by other foreign creditor, 44 C 204
an assignment for the benefit of creditors in New York is under the exclusive jurisdiction of that State, 56 C 182
common-law assignment made in New York and valid there, *held* valid here, 58 C 324, 61 C 154
administration of funds of insolvent beneficiary association so as to protect members in this State by retaining funds here, 64 C 170
each State determines what constitutes a record in its insolvency courts, 69 C 493
as regards orders in receivership proceedings, 69 C 709, 73 C 378, 79 C 175
application of state law to national bank; receivership, 76 C 253
in bankruptcy, local law determines whether property could be levied on before adjudication, 85 C 45
comity as applied between State of primary receivership and States of ancillary receiverships, 104 C 206
by appointing receiver, State court acquires jurisdiction over property therein, not controllable by any other State, 104 C 206
court of ancillary receivership may order distribution of assets within its State; but ordinarily they will be turned over to State of primary receivership, 104 C 206
where Connecticut receivers made loans to be repaid from profits of cropping operations on lands in other States where ancillary receivers were appointed, Superior Court *held* to have jurisdiction over disposition of proceeds, 104 C 206
in certain cases receiver may not be denied right to sue in foreign State, 104 C 665
——in other cases right rests on comity, 104 C 665
——citizens of State where suit is brought are to be protected, 104 C 665
pendency of bankruptcy does not automatically stay foreclosure proceedings in state court but matter is for bankruptcy court to determine, 123 C 9
——reorganization proceeding in federal court does not oust Superior Court of jurisdic-

tion to vacate foreclosure judgment and allow withdrawal of the action, 123 C 9

§ 7. Miscellaneous Cases

trust funds originally located in this State are not controlled by New York law because there invested, 27 C 605

right of foreign party to maintain replevin in this State is controlled by lex fori, 45 C 109

resident of Connecticut claiming legacy from estate in New York must resort there for his remedy; auxiliary administration and garnishment of stock of estate here will not avail him, 67 C 24

as applied to conversion, election, or power to appoint under will, 70 C 196

proceedings to protect goods of an incompetent, 76 C 405

for purposes of foreign attachment debt had situs where debtor is, 79 C 15

adoption under Wisconsin law similar to our own, recognized; requisite domicil to give jurisdiction of proceedings, 81 C 152

designation and approval of executor determined by court of testator's domicil; can be disapproved by ours, 81 C 681

Connecticut corporation does not escape liability because incorporated also in Massachusetts, 82 C 73

Congress cannot interfere with Connecticut regulation of master and servant, 82 C 353

validity of patent may be indirectly passed on by State court; and transfer of patent restrained, 87 C 74

foreign creditor can enforce husband's statutory liability for wife's debts while abroad, 93 C 513

what law governs where corporation organized in one State to do business in another, 94 C 555

a federal collector of Internal Revenue cannot be enjoined from collecting taxes and enforcing the same against property of a corporation in the hands of liquidating trustee, 96 C 79

issuance of injunction against nonresident within trial court's discretion, 104 C 206

bank receiving commercial paper for presentment, acceptance and collection, governed by laws, customs and usages of its own locality, 105 C 33

warrant for arrest issued in another State of no effect here, 105 C 374

prisoner here on parole from California may be taken on extradition at request from Michigan; Michigan's consent to the parole immaterial, 105 C 374

situs of right to receive income of trust fund is beneficiary's domicil, 107 C 1

situs of debt for garnishment is domicil of debtor, 107 C 545

——jurisdiction based on garnishment depends on situs of debt and judicial control over it, 107 C 545

——provision of contract for litigation of disputes in specified courts is contrary to public policy, 107 C 545

ejectment as a local action, to be brought where land lies, 108 C 175

New York administrator as person authorized there by statute to enforce claim as trustee for beneficiaries may pursue remedy in this State, 108 C 436

effect of declaration of dividend by corporation of another State determined by its laws, 109 C 268

——hence we give effect to New York rule by which dividend vests when declared though payable to stockholders of record at future date, 109 C 268

——but our law governs status of trustee and beneficiaries here, interprets will, and determines who entitled to dividends, 109 C 268

——in general foreign law governs relationship of stockholders to corporation, 109 C 277

rights conferred on national banks prevail over attempted curtailment by State, 110 C 13

——such as depriving of trust powers, escheating deposits or suing in corporate name, 110 C 13

——but otherwise subject to state regulation, 110 C 13

name conferred upon national bank not open to alteration or impairment by State unless used tortiously, 110 C 13

giving effect to laws of another country is wholly a matter of comity, 111 C 383

——where there is comity a prior judgment in one jurisdiction will prevent a garnishee process in another, 111 C 383

——but a voluntary payment will not have that effect, 111 C 383

——where there is no comity and the liability is fixed, our courts will protect a resident from double liability, 111 C 383

obligation of fire insurance company to pay loss is enforceable wherever service can be made on the company, 111 C 383

debts have strictly no legal situs but for purpose of foreign attachment are given situs of debtor, 111 C 391

legal effect of attempt to execute power of appointment depends on law of residence of donor of power, 111 C 603

to establish business situs of property for taxation there must be a continuous or permanent business as distinguished from a temporary one or isolated transactions, 118 C 101

——property or right must be localized in

some independent business so that its substantial use and value primarily become asset of business outside State as subject-matter of that business, 118 C 101
——mortgage bonds secured by real estate in New York and retained there, taxable at decedent's residence in Connecticut, where not connected with any business there, 118 C 101
accused *held* guilty where goods were stolen in this State but purchased by him in New York State and transported back to and concealed in this State, 119 C 29
——those who aided and abetted in purchase and transportation *held* guilty as accessories, 119 C 29
right of beneficiary in trust to receive income has its situs at his place of business, 119 C 136
——hence where he had conservator in this State but none in State of his residence, income should be paid directly to him, 119 C 136
taxation of trusts under succession tax law; location of property, domicil of settlor, etc., as determining jurisdiction to tax, 122 C 107 and see TAXATION
unless precluded by congressional action, powers of State over highways extend to general regulation for their preservation and protection of safety of travel thereon, 122 C 275, 289
——regulation may include requirement that interstate as well as intrastate carriers shall furnish security by way of insurance or provision of financial responsibility for payment of compensation, 122 C 275
——requirement that insurance be by policy issued by company authorized to do business in State is reasonable one, 122 C 275
——right of State to prescribe such regulations as to motor vehicles in interstate commerce is conditioned on absence of national legislation on subject, 122 C 275
——state regulation covering same ground as rule prescribed by or under authority of Congress, will not have any force, 122 C 275
——state law or regulation need not be repugnant thereto; it is superseded if federal law covers precise subject matter or shows purpose to take legislative possession of whole field, 122 C 275
enactment of Congress and rules of interstate commerce commission thereunder substantially the same as those of our public utilities commission concerning insurance requirements of interstate carriers *held* to have superseded the latter and rendered them inoperative, 122 C 276
when dividend becomes a debt to stockholder depends on law of State of incorporation, 127 C 675
——where court not informed as to applicable law of another State, which would control, it refused to give advice in a will construction case, 127 C 675
——whether dividends of corporation are apportionable when a life tenant dies depends on law of this State, 127 C 675
whether commission of particular crime affects credibility is to be determined by the law of the forum, 128 C 180

CONFUSION OF GOODS

See also ACCESSION

meaning of the term "confusion of goods," 7 C 280
there can be no confusion where goods are easily distinguishable, 12 C 483
where no fraud and goods not inseparably intermingled, title is not affected, 43 C 391
separate judgments for each claimant cannot be rendered where identification is impossible and the whole is insufficient to satisfy all, 57 C 399
where stocks belonging to several customers are rehypothecated by broker, customer redeeming must reasonably identify securities, 63 C 200
——identification of any certificate as the one actually bought or carried to fulfill order is sufficient, 63 C 200
——where a block of stock is carried sufficient to meet demands of all customers of that stock each may redeem shares equal to his carrying, 63 C 200
——where identification fails and there is a shortage of any kind of stock, stocks on hand are presumed to be carried for customers, 63 C 200
——and shortage to be from sales of stock owned by firm, in absence of proof, 63 C 200
——each customer may redeem in full if stock is sufficient; if insufficient, then ratably, 63 C 200

CONSERVATORS

§ 1. In General; Appointment
2. Duties and Powers; Actions

See also Probate Court

§ 1. In General; Appointment

an insane person is not a proper subject to have an overseer appointed by the selectman; the law provides that such persons shall have a conservator appointed by the County Court, 1 R 426

administrator or executor of ward on his death is entitled to ward's estate, 1 C 71

how claims of conservator exhibited after ward's death, 5 C 430

adjustment of account of conservator by County Court is not a judgment; debt on judgment will not lie for balance, 5 C 430

cannot be appointed over one whose actual residence is out of the district, though general domicil be in the district, 26 C 281

——parol evidence of nonresidence of ward, admissible, 26 C 282

Probate Court in appointing conservator acts as a special tribunal, 26 C 286

——is strictly confined to statute prescriptions, 26 C 285

judge of probate who is selectman cannot act upon application for appointment of conservator, 28 C 268

Probate Court may adjust account of conservator after leaving office, 28 C 272

names of all the selectmen signed by one selectman with others' consent, informality in application is waived by respondent's default, 29 C 568

evidence proper to sustain application for conservator on ground of intemperance and debauched habits, 30 C 87

respondent may object on return day to conservator previously appointed with respondent's consent, 35 C 85

court may dismiss one of two similar applications for conservator and appoint on the other, 37 C 364

ward may acquire domicil elsewhere, 48 C 165

only those specified in statute can apply for appointment of conservator; appointment void if on application of others, 49 C 84

bond by conservator, in form of administrator's, *held* void as meaningless and uncertain, 49 C 84

disability of ward does not operate where statute does not, 49 C 278

——contract by ward in Massachusetts valid there is valid here, 49 C 278

——that plaintiff knew ward was under conservator in Connecticut does not affect, 49 C 278

disability of ward does not begin until conservator is appointed under statute, 51 C 79

whether conservator is included in the term "guardian," quaere, 53 C 119

judge of probate has no power to direct money due ward to be paid to conservator to satisfy his claim, 53 C 120

——such direction is not a judicial order; invalid as extra jurisdiction, 53 C 120

——but where payment was made under such an order, payment would be a good accounting for money in hands of conservator, where amount was really due from estate of ward, 53 C 120

liability of estate for necessaries furnished ward; express contract with conservator; false representations by latter; application of statute as to services rendered estates in hands of executors, guardians, etc., 72 C 167

finding of trial court as to incapacity conclusive, 72 C 340

history of legislation de conservator; application for and appointment; conflict of laws; right of action here as property; discretion of court; scope of protection afforded; evidence of incapacity, 76 C 406

adjudication of incapacity not conclusive twelve years later, 78 C 340

incompetent can take title, 82 C 151

incipient senile dementia does not make one incompetent, 83 C 516

policy of law is to have persons manage their property when possible, 83 C 516

a drunkard in Connecticut sanitarium *held* to be resident here, 90 C 529

national bank may act as conservator, 94 C 648

elements necessary to warrant appointments, 107 C 1

residence, not location of property, determines jurisdiction, 107 C 1

purpose is to safeguard property; mental derangement or physical incapacity not essential, 107 C 1

conservatorship should not be used to impose unnecessary restraint or oppression, 107 C 1

findings de residence and incompetency are conclusions of fact, 107 C 1

effect of adjudication of incompetency is to render person conclusively incapable of making valid contract while conservatorship continues, 113 C 594

——contracts void not merely voidable, 113 C 594

failure of court to appoint successor to conservator who resigns, and return of possession of property, amount to termination of conservatorship, 113 C 594
——thereafter person presumptively competent to contract, 113 C 594
to warrant discharge of conservator, there must be clear proof that party is restored to mental soundness, 113 C 606
title to money paid to conservator of veteran under World War Veterans Act passes to veteran, 115 C 326
——not entitled to priority where bank in which it was deposited fails, 115 C 326
——conservator not acting as agent of government, 115 C 326
conservator is arm or agent of Probate Court in performance of trust, 115 C 326
payments under trust to be made directly to beneficiary domiciled in New York though he has Connecticut conservator, 119 C 131
on final account of conservator, Court of Probate has power and duty to determine all issues involved in ascertainment of property fiduciary is bound to deliver to persons entitled, 126 C 324
incompetent could assert claim against proceeds of partnership after he was restored to capacity, 126 C 330
agreement, purpose of which was to postpone adjudication of issue of how surplus income was to be disposed of and to effect arrangement for its use in support of destitute heirs in interim was proper matter to submit to Probate Court and its approval was conclusive on parties, including one represented by conservator, 127 C 207
conservator misappropriated funds and deposited some in name of estate of which he was executor; his coexecutor and the estate not liable where they receive no benefit and had no knowledge in suit by surety on conservator's bond, 129 C 576

§ 2. Duties and Powers; Actions

action may be brought against ward alone, K 174
——conservator to be cited in with reasonable time to prepare, K 174
liable after expiration of term on express promise while in office; has remedy over against ward's estate, 2 R 371
suit by ward; averment that he sues by conservator is surplusage, 3 D 475
——judgment for ward, valid, 3 D 475
right and duties of conservator cease on death of ward, 1 C 69, 5 C 430
acquires no lien on ward's estate, 1 C 70
deed of ward with consent of conservator, void, 3 C 231
of idiot is not empowered to lease ward's real estate, nor to sell growing timber and firewood, 5 C 284
——lessee of conservator, committing waste, is a trespasser ab initio, 5 C 287
may arbitrate ward's claims, 12 C 381
in action by conservator, appointment must be shown by court record, 12 C 382
——record must show that notice was given, 12 C 382
——officer's return to this effect is insufficient without finding of notice, 12 C 383
action on award made to conservator as such to be brought in ward's name, 12 C 383
agreement of conservator with third person de ward's property is not binding after death of ward, 19 C 596
——administrator on ward's estate may recover moneys paid over under agreement, 19 C 596
record of appointment of conservator admissible against ward for assault on conservator, 29 C 568
may enter ward's house against his will to do official business, 29 C 569
cannot sue in his own name for money lent by ward, 44 C 121
not liable for debts of ward before appointment; such claims are against ward alone, 53 C 118
acts independently of ward; is sole responsible party in all his transactions, 53 C 119
cannot bind ward or his estate by contracts, 53 C 119
sale of land of ward subject to mortgage to secure note of conservator given for benefit of ward; purchaser to pay note as part of price; mortgage discovered invalid, 53 C 178
——*held* heirs of ward could recover balance of price, 53 C 181
——or conservator as assignee of heirs could recover, he having paid the note, 53 C 182
——or conservator had a good cause of action in his own right, having paid money for defendant's benefit at his request, 53 C 182
has power under statute, to lease premises of ward for a reasonable time, 55 C 115
——can recover possession on expiration of lease in his own name as conservator, 55 C 116
conservator not necessary party to action by ward; allegation that action is with his consent does not make him a party, 66 C 444
powers; defined by statute; diligence required as to investment; investing in mortgages of land in another state; burden of proof and damages on unlawful investment; compounding interest, 67 C 187
power of conservator to lease ward's real estate, 67 C 195
power of conservator to submit controversy to arbitration; Probate Court may author-

ize settlement of controversy, and approve terms in advance, 71 C 590, 85 C 52
fraudulent sale by conservator under order of court; parties to action for, after ward's death, 81 C 127
appointment of conservator as proof of incompetency, 82 C 151
incapacity and appointment of conservator question of fact, 83 C 516
cannot borrow money to buy interest in business without order, 85 C 279
lender must know conservator's powers, 85 C 279
must pay ward benefits from improperly invested funds, 85 C 279
conservator's final accounts admissible against him, 85 C 279
should bring suit in name of ward; not fatal if he does not, 91 C 680
——right of administrator of ward to enter and prosecute after ward's death, 91 C 680
conservator not liable for ward's wife's wearing apparel, when, 93 C 34
statute permitting actions for just claims does not apply to conservator in transaction to which he is not party, 93 C 34
actions are to be brought against ward, defended by conservator, 93 C 37
after acceptance of final account action for breach of duty by fiduciary may be brought, and decree would create estoppel only as regards items within administration of estate, 126 C 324
——for such breach of duty no recovery of substantial damages can be had except such as were result of it, 126 C 324
——failure of plaintiff's conservator to discover and inventory his interest in farm partnership did not produce substantial injury, 126 C 324
——moreover his interest in the real estate was brought into administration by application for order of sale and was accounted for in final account, unappealed from, 126 C 324
——claim that sale was invalid too late when it was not raised by objection to final account, 126 C 325
conservator has implied powers to make contracts so far as they are involved in exercise of powers expressly granted him, 127 C 207

CONSIDERATION

See Bills and Notes § 3; Contracts § 4; Deeds § 4; Fraudulent Conveyances § 4; Gifts; Mortgages; Sales; Subscriptions

CONSIGNMENT

See Bailments; Sales

CONSIGNOR AND CONSIGNEE

See Bills of Lading; Carriers; Factors

CONSPIRACY

§ 1. In General; What Constitutes
2. Conspiracy to Defraud
3. Pleading and Evidence

See also Criminal Law and Procedure; False Arrest or Imprisonment; Fraud; Labor Unions

§ 1. In General; What Constitutes

act of one is act of all after combination is proved, 2 D 210
indictable whenever the means or end is unlawful, 12 C 112
acts not criminal by one may become so when done by a combination, 12 C 112
matters connected with joint purpose known or done by one are the acts of all, 19 C 237
death of one conspirator pending suit; decree may be passed against the rest, 26 C 314
conspiracy to steal followed up by attempt of one abetted by other renders both guilty, 30 C 507
combination of nonresidents to commit crime here, 34 C 131
——acts and declarations of those coming here admissible against all, after perpetration of crime, 34 C 131
combination to escape state's prison; law applicable to alleged abandonment, 47 C 138

a boycott is within statute de conspiracy, 55 C 69
if two or more persons confederate to commit a crime such confederation is a crime; and where the end is lawful but the means criminal, it is a crime, 55 C 69
boycotting of newspaper to compel discharge of nonunion workmen *held* within statute, 55 C 69
defined and considered, 55 C 70
an attempt to gain advantage unjustly and at the expense of others is legally corrupt and therefore malicious, 55 C 71
boycotting by employees of patrons of employer is prima facie malicious and corrupt, 55 C 76
law imputes knowledge of acts of conspirator to his coconspirators, 57 C 223
conspiracy to commit a crime *held* not merged in a felony actually committed; may be punished as a distinct offense, 57 C 465
conspiracy *held* not to have the same ingredients as theft, 57 C 469
conspiracy a misdemeanor at common law, 69 C 725
conspiracy to commit crime; act of one as act of all, 72 C 642
strike and boycott, 77 C 227, 92 C 161
intimidating employer to discharge servant by conspiracy as civil and criminal wrong, 79 C 414
as aggravating the offense which it seeks to accomplish, 79 C 417
statute making it a criminal offense to intimidate workmen from working for employer construed, 80 C 614, 92 C 161
two agree to kill deceased; law of conspiracy applied, 84 C 152
conspiracy in New York may be felony or misdemeanor, 84 C 371
conspiracy to commit assault is high crime and misdemeanor, 86 C 434
if agreement between employer and employee prevents a man's employment, he is entitled prima facie to recover, 86 C 641
combination unlawful if its object or means it uses are unlawful, 86 C 655
rights of employers to combine to collect fines and punish member, 88 C 332
employers can pass by-laws against dealing with unions as such, 88 C 332
in conspiracy to commit rape; intent to commit crime is necessary, 92 C 47
if object is unlawful, that means used are lawful is no defense, 95 C 85
verdict of murder upheld against five who conspired to commit burglary and to resist interference where death due to act of one alone, 97 C 322
——abandonment of criminal purpose by one, 97 C 322
——where former only of two purposes was abandoned it would not avail, 97 C 330
conspiracy to boycott and injure plaintiff's business, 98 C 11
conspiracy to commit a crime is not merged in crime thereafter committed, 99 C 114
what constitutes, 108 C 683
gist of action is act done, not the conspiracy, 108 C 683
act not otherwise actionable does not become so because done by several in pursuance of agreement, 108 C 683
criminal conspiracy must be found to be unlawful act or lawful act by criminal or unlawful means, 114 C 354
——acts contemplated need not constitute criminal offense without element of conspiracy, 114 C 354
——conviction of conspiracy to defraud noteholders by concealment of payment of note and unlawful appropriation of moneys paid, upheld, 114 C 354
exceptions to criminality of combinations limited to where combined numbers have no more power for harm than an individual, 114 C 354
——combination of all persons having control of corporation not within exception, 114 C 354
corporation may be party to conspiracy, counted in computing its numbers, and indicted and convicted, 114 C 354
requisites (1) combination between two or more, (2) to do criminal or unlawful act, (3) act done by one or more conspirators pursuant to the scheme, (4) which results in damage to plaintiff, 116 C 433
to commit assault and breach of peace at voting places during election; judgment of guilty sustained, 119 C 70
member of medical society who attempted to prevent attendance of witness in malpractice case or to suppress evidence might be guilty of, 119 C 492
conspiracy in connection with strike, 124 C 554
where two persons conspire to commit robbery while armed, all who join in the common design are equally guilty of the homicide which results, 126 C 59
to constitute conspiracy there need be no formal agreement; it is sufficient if acts were performed in pursuance of mutual understanding continuously operating, 126 C 61
——not necessary to prove evil or corrupt intent, but only that defendant intentionally committed acts constituting the criminal conspiracy, 126 C 62
agreement of defendant, representing State, with brokers representing sellers of land to State for Merritt Parkway, to share commissions received by latter, *held* common-law conspiracy, in view of statute characterizing such acts as inimical to public interest, 126 C 61

where conspiracy not one specifically to violate statute but to commit unlawful acts against spirit of statute, principle that where crime can only be committed by concurrence of two parties, they must be charged with it and not conspiracy to commit it, does not apply, 126 C 62

Statute of Limitations does not begin to run against charge of conspiracy until last overt act committed, 126 C 62

where punishment for conspiracy was increased by amendment, amendment did not apply as regards conspiracy last overt act of which took place before amendment, 126 C 62

where indictment contained two counts charging different conspiracies, against one of which Statute of Limitations had run, sentence as upon one count, where there was no means of determining to which count it applied, erroneous, 126 C 62

——error did not affect verdict and case remanded for new judgment thereon, 126 C 62

whenever two persons combine to do act which in civil proceedings would be held illegal, they are not necessarily guilty of criminal conspiracy, 126 C 78

gist of offense is unlawful combination, 127 C 545

——whether information charges combination formed to accomplish one or many objectives immaterial, 127 C 545

——where single conspiracy is charged defendants who were parties to it guilty; but if no single conspiracy proved defendants who were parties to several distinct conspiracies not guilty, 127 C 545

that defendants were city officials for terms of only two years would not establish separate conspiracies limited to that period, 127 C 545

——such fact of significance only as affording opportunity to further conspiracy, 127 C 546

where conspiracy continued after statute prescribing penalty was amended so as to increase sentence, defendants violated it in amended form and became subject to increased penalty, 127 C 606

to constitute conspiracy there need be no formal agreement between the parties; enough if there is mutual purpose to do forbidden act, 129 C 537

§ 2. Conspiracy to Defraud

equity will relieve against note payable to bankrupt, obtained by conspiracy, 1 D 107

combination to ruin plaintiff; Statute of Frauds, 2 D 531

bill by corporation and stockholders seeking cancellation of stock subscriptions and also of company's notes, *held* not multifarious, 26 C 315

to defraud; gist of offense is the agreement to defraud, 48 C 549

——conviction may be had without regard to value of property sought, 48 C 550

cheating as a conspiracy, 75 C 206

fraudulent conspiracy to deprive one of his jus disponendi, 75 C 338

fraud in exchange of property, 91 C 123

fraudulent conspiracy to get property of testator, 91 C 388

in conspiracy to defraud, representation as to value of property is more than mere opinion, 95 C 79

to defraud real-estate broker of opportunity to earn commission, 103 C 708

——participation of all defendants in fraud sufficient, though no further conspiracy shown, 103 C 708

conspiracy to defraud buyer of real estate by sale to another *held* not established, 107 C 612

conspiracies to cheat and defraud without use of false tokens are indictable at common law, 114 C 354

where two or more combine to do unlawful or fraudulent act and thus breach a contract it is actionable conspiracy and if carried out all and each participating are liable in damages, 116 C 278

dealings between plaintiff and defendants after fraudulent conspiracy but before discovery of it do not create estoppel or waiver, 116 C 375

building committee and man with whom they made contract for sidewalk sued for fraud and conspiracy; conclusion that there was no fraud or conspiracy sustained, 118 C 712

to defraud the city of Waterbury, 127 C 543

——if evidence proved no more than that defendants had similar underlying object to defraud city through separately planned conspiracies each complete in itself, they could not properly be convicted, 127 C 543

——evidence of large number of transactions with similarity of plan and purpose, 127 C 543

——minimum which State must prove as against any one defendant to make out case that he participated in general conspiracy, 127 C 563

——whether general conspiracy was proved or whether a number of separate conspiracies was question for jury; verdict set aside as to four of appealing defendants, 127 C 543

——certain defendants could not be held criminally liable for negligence of themselves or employees or for misconduct on part of latter of which they had no knowledge, 127 C 574

§ 3. Pleading and Evidence

how proved in ordinary cases, 2 D 209, 19 C 237

declarations of one admissible against all, when once the combination is proved, 21 C 234

——whether combination be sufficiently shown to admit these declarations is a question for the court, 21 C 234

—admission of declarations not objected to is no ground for new trial, 21 C 234

often shown by circumstances in themselves of little weight, 21 C 281

evidence of similar fraudulent representations to others admissible to prove, 25 C 492

information for conspiracy not defective because the means set out are per se offenses, 48 C 548

declarations of conspirator supplementary to acts of conspiracy, admissible, 55 C 78

evidence that defendant and another walking together dropped papers between, admissible to prove distributing of boycotting circulars, 55 C 79

threats to do to the plaintiff what defendant had done to another; evidence of acts done to the other admissible, 55 C 80

evidence of hearing talk of conspiracy between persons connected with it, admissible, 55 C 82

declarations and acts of conspirators *held* admissible against defendant coconspirator, if said or done during conspiracy and in furtherance of it, 57 C 222

——although declarations are in absence of coconspirator, 57 C 222

——for the court whether sufficient foundation is laid for same, 57 C 223

basis for proving acts and statements of one conspirator as affecting others; jury must finally say whether conspiracy so far proved as to justify their consideration; discretion of court as to order of evidence; essence of offense; is misdemeanor at common law, 69 C 720

definition, elements, indictment, and evidence; acts and words of each conspirator as affecting others, 75 C 210, 77 C 227

want of consideration for deed as evidence of conspiracy to secure conveyance and oust possession, 77 C 403

declaration of one conspirator, when admissible, 90 C 544

how finding should present question whether there was prima facie showing of conspiracy to admit declarations, 98 C 807

——amount of proof before admitting them is in discretion of court, 98 C 814

calling a conspiracy to steal plaintiff's goods a "robbery" *held* an immaterial variance, 98 C 810

where complaint charges conspiracy to defraud one lacking in mental capacity to make transfer of property, issue of conspiracy is distinct from that of mental capacity and charge should so state, 100 C 449

admissibility of declarations of conspirators; testimony of conspirators before referee in bankruptcy admissible in later action by trustee to recover fraudulent transfer, 108 C 58

conspiracy may be proved by circumstantial evidence and inference, 114 C 354

conspiracy to injure and assault *held* established by facts, 114 C 567

verdict against defendant properly set aside where there was no basis in evidence or on complaint for finding of fraud or conspiracy in receiving deed of land, 116 C 278

fraud by combination or conspiracy may be inferred from series of successive transactions of same character even though not contemporaneous or nearly so, 116 C 375

——the evidence is not introduced to prove character of parties but to establish the common purpose, 116 C 375

——concurrence of common plan must be shown as well as similarity of results, 116 C 375

——where actions brought based on other transactions, court may take judicial notice of files, 116 C 375

where conspiracy in effecting fraudulent purchase of goods is alleged, evidence of like fraudulent acts between some conspirators at about same time and of same nature, is admissible, 116 C 433

——not necessary that frauds be similar in each detail, 116 C 433

——sufficient if method and scheme of same character is used, 116 C 433

other transactions showing similar methods in getting owners of land to sell it for unsecured note by fraudulent representations *held* properly admitted, 116 C 433

sufficiency of information, 124 C 554 and see CRIMINAL LAW AND PROCEDURE

whether general conspiracy was proved or whether a number of separate conspiracies was question for jury; verdict set aside as to four of appealing defendants, 127 C 543

whether information charges combination formed to accomplish one or many objectives immaterial, 127 C 545

——where single conspiracy is charged defendants who were parties to it guilty; but if no single conspiracy proved defendants who were parties to several distinct conspiracies not guilty, 127 C 545

evidence to show same method of operation running through numerous transactions as bearing on question of single conspiracy, 127 C 546

the order of proof is in the discretion of the court and it may accept evidence of acts and statements of certain defendants before prima facie proof of conspiracy, 127 C 595

——so it may admit testimony subject to later proof necessary to make it effective as to certain defendants, 127 C 596

evidence relevant upon the charge of conspiracy, 127 C 596

conspiracy may be established by proof of separate acts of individual conspirators done in accomplishment of common purpose, 129 C 537

evidence establishing that defendants occupied room with apparatus for placing wagers on horse races sufficient to find them guilty of conspiracy to maintain gambling establishment; statute does not require actual making of bets, 129 C 538

CONSTITUTIONAL LAW

§ 1. In General
2. Impairing Obligation of Contract; Ex Post Facto and Retrospective Laws (U. S. I, §§ 9 and 10)
3. Full Faith and Credit (U. S. IV, § 1)
4. Equal Protection of Laws; Privileges and Immunities of Citizens (U. S. IV, § 2; Amend. XIV, § 1; Conn. I, §§ 1 and 12)
5. Deprivation of Life, Liberty or Property without Due Process of Law (U. S. Amend. V and XIV, § 1; Conn. I, §§ 9 and 12)
6. Just Compensation for Property Taken for Public Use (U. S. Amend. V; Conn I, § 11)
7. Police Power
8. ——In General
9. ——Particular Cases and Situations
10. Provisions concerning Crime and Criminals
11. U. S. Constitution, Miscellaneous
12. Connecticut Constitution
13. ——Miscellaneous
14. ——Right to Trial by Jury (I, §§ 9 and 21)
15. ——The Legislative Department
(1) In General
(2) Delegation of Powers
16. ——The Judicial Department
17. ——The Executive Department

§ 1. In General

courts ought to act cautiously in declaring a law unconstitutional, 7 C 246, 25 C 289

state courts can pass upon the validity of acts of Congress, 7 C 247

duty of court to disregard unconstitutional act, 13 C 93

the impolicy and injustice of a law is not a criterion of its constitutionality, 13 C 103

United States Constitution is a grant of powers not previously existing, 13 C 125

power of courts to declare a law void as opposed to natural right, 25 C 297, 30 C 155

statute may be in part valid and in part unconstitutional, 25 C 299

statute should be clearly repugnant to Constitution, to be adjudged unconstitutional, 29 C 227, 42 C 588, 51 C 127

statute requiring sureties of the peace from reputed bawdyhouse keeper constitutional, 31 C 574

special act enabling town to build hall to be used partly for private purposes is not opposed to social compact, 37 C 587

right to declare statute void for unconstitutionality only to be exercised in clear cases, 42 C 583

where statute admits of two constructions, the one upholding its validity should be adopted, 48 C 338

words are presumed to be used with their established meaning, 64 C 450, 68 C 150, 77 C 257, 86 C 627

contemporaneous and established usage may determine construction, 64 C 453, 65 C 148, 68 C 150, 77 C 257, 86 C 625, 87 C 507, 554

laws are presumed, and if possible, construed, to be valid, 64 C 457, 73 C 25, 505, 76 C 441, 78 C 564, 79 C 441, 86 C 141
in passing on its constitutionality court looks at the essence, not the form, of statute, 65 C 484, 79 C 444
in general; nature and definition of Constitutions, 67 C 305, 69 C 127, 583
statute will not be held unconstitional unless clearly so, 73 C 18, 83 C 4, 85 C 344, 86 C 141, 89 C 394, 94 C 639, 95 C 357
part only of a statute may be declared unconstitutional, 73 C 30, 505, 75 C 319, 77 C 333, 78 C 53, 82 C 352, 85 C 344, 92 C 205
power to declare law unconstitutional; limits of power to construe, 73 C 259
State and federal Constitutions are to be regarded together, 73 C 259
declaring law unconstitutional as against principles of free government and natural justice, (dis.) 73 C 283, 81 C 534
presumption that statute is valid, 73 C 546, 82 C 352, 83 C 1, 85 C 344, 86 C 141, 95 C 357
court should question constitutionality of statute only in behalf of party in interest, 73 C 546, 95 C 242
provision in constitutions should be construed with relation to whole instrument, 78 C 551
power once expressly granted not to be later cut down except by express provision or necessary implication, 78 C 564
constitutional guarantees extend over private property of municipal corporations; shares in water company, 80 C 646
all legislation legitimate if not contrary to republican principles or Constitution, or morality, 81 C 534, 536
Bible as rule of government in Connecticut, 81 C 535
States may confer corporate franchise on foreign corporation, 82 C 73
no presumption that Congress intends to compel States to enforce rights contrary to their law and policy, 82 C 352
courts sustain valid, and reject invalid, parts of statute, if possible, 82 C 352, 85 C 344, 92 C 205
whether there is presumption of constitutionality of United States' act which invades State's rights, quaere, 82 C 353
only clear conflict between statute and Constitution permits interference, 83 C 2
right to appeal not constitutional one, 83 C 128
declaring law unconstitutional as against principles of free government and natural justice, 85 C 347
no room for construction if language clear, 86 C 625
if language ambiguous, intent of framers, contemporary construction, statutes then existing, meaning of terms at common law, considered, 86 C 625, 87 C 507
practical construction on provision long used is persuasive of meaning, 87 C 507, 554
federal statute, where it applies, is exclusive of any other remedy, 87 C 634
when courts will hold legislative act void, 89 C 394
voluntary payment of unconstitutional tax not recoverable, 92 C 199
State's adoption of Federal Income Tax Law definitions upheld, 94 C 47
extent of damages for violation of constitutional right no significance, 94 C 75
cannot enjoin collection of street assessment as unconstitutional, if there is adequate remedy at law, 94 C 510
while presumption is in favor of act, it may be investigated in this court, 94 C 639
only those whose constitutional rights are affected can ask for construction, 95 C 242, 367, 487
law must be reconciled with Constitution if possible, 95 C 242
constitutionality of statute ought not to depend upon the way in which it is finally administered by those charged with its execution, 96 C 191
Constitution to be interpreted in light of law existing when it was adopted, 96 C 311
——exceptions, as to guarantees in Bill of Rights, may be implied, 96 C 311
only one whose rights have been invaded by a statute is in position to claim it to be unconstitutional, 96 C 605
courts are not concerned with propriety of legislation, but with its effect and constitutionality, 97 C 729
law cannot be declared unconstitutional as against public policy, 98 C 714
voluntary acceptance of Compensation Act by employee precludes constitutional objections, 99 C 357
constitutional law follows substantially recognized course of fair dealing, 99 C 379
every presumption and intendment to be made in favor of validity of statute, 104 C 192, 579
duty of citizen to protect, defend and obey Constitution; violation as involving moral turpitude, 104 C 257
every legitimate manufacturing enterprise affected with a public interest, 104 C 632
statute to be construed in harmony with constitutional requirements, 106 C 642
question of constitutionality of statute authorizing mayor to issue certificate of approval of location of gasoline station not raised by pleadings, 109 C 583
where question of constitutionality of statute not raised on trial, it will not be considered on appeal, 109 C 588, 111 C 88, 188, 209, 114 C 72, 116 C 12

long settled and established practice of great weight in construing constitutional provisions, 109 C 621

bringing of application for approval of location of gasoline station and appeal from refusal as recognition of validity of law, 110 C 80

——applicant cannot on appeal assail constitutionality of law, 110 C 80

guarantees to be interpreted in light of existing conditions and changing times, 110 C 105

laws held unconstitutional only when they are clearly so, 110 C 106

——courts cannot substitute their judgment for that of Legislature and must uphold law if question is fairly debatable, 110 C 106

constitutionality of exemption of buildings from zoning regulation for which permit already issued not determined, 110 C 130

——operative provisions of regulations not affected thereby, 110 C 130

every intendment will be made in favor of constitutionality of ordinance, 111 C 27

one who founds right of recovery on statute cannot claim it to be unconstitutional, 111 C 72

constitutionality of guest statute not considered when raised for first time in amendment to reasons of appeal, 111 C 72

law to be deemed constitutional till challenged in court, 111 C 75

——only one affected by it can make claim, 111 C 76

——and question of constitutionality may be waived, 111 C 76

if there is room for difference of opinion as to propriety of legislative action, it will be sustained, 111 C 437

one who brings application and takes appeal under zoning ordinance cannot question its constitutionality, 111 C 616

constitutionality of statute raised in argument and in additional reasons of appeal will be considered by Supreme Court, 112 C 129

jurisdiction to determine whether a statute is unconstitutional is in judiciary, 112 C 129

——attempt of Legislature to do it by indirection is encroachment on judicial authority, 112 C 129

every law has force and effect as such until constitutionality is challenged by judicial means, 112 C 139

plaintiff *held* to have waived right to question constitutionality of zoning acts of 1925 or right of Legislature to validate them, 112 C 236

waiver of question of unconstitutionality by failure to take advantage of it when there was opportunity, 112 C 236

——estoppel where public and private rights have become established under law claimed unconstitutional, 112 C 236

payment of public charge, without protest, cannot thereafter be questioned by payor, 112 C 236

appellant having recognized and utilized zoning regulations by proceeding under them cannot attack their constitutionality, 113 C 49

court will not impute to Legislature an intent which would make statute unreasonable and of doubtful constitutionality, 113 C 240

constitutionality of provisions of building code will not be determined under application of mandamus to compel issuance of permit, 115 C 406

defendant accepted license to sell gasoline and collected tax under 1927 act; *held* he cannot now refuse to pay money collected to State on ground that statute is unconstitutional, 115 C 554

neither party accepting the Workmen's Compensation Act can thereafter maintain that his constitutional rights are impaired thereby, 116 C 91

duty of court to sustain act unless its invalidity is beyond reasonable doubt, 116 C 458

where provisions of statute not involved in case and are so separable that their constitutional validity does not affect provision under attack, it need not be considered, 116 C 458

administrative usage, while not binding, is entitled to great weight in construing constitutional provisions, 117 C 194

intent on part of Legislature to enact law of doubtful constitutionality is not readily to be inferred, 117 C 237

vesting in superintendent of banks of power to determine necessity and amount of assessment upon stockholders of bank, not unconstitutional delegation of judicial power under New York Constitution, 119 C 83

duty of courts to approach constitutional questions with great care, to make every presumption and intendment in favor of act, and sustain it unless invalidity is clear, 119 C 325

in absence of constitutional or statutory prohibitions any court has power to pass on constitutionality of statute, 119 C 326

——but City Court should only declare act invalid on clearest grounds where rights of litigant make it imperative, 119 C 323

——better for such a court to leave decision to higher court, 119 C 323

court will not attribute to Legislature an intent to enact a provision in a statute of doubtful constitutionality and beyond scope of law, 119 C 679

——provision should be construed so as to be valid and reasonable, 119 C 679

appellant having sought relief under zoning regulations cannot be heard to question their constitutionality, 120 C 455

court dismissed without discussion contention that to hold that injuries from wanton or reckless conduct of coservant may come within Compensation Act would render act unconstitutional, as our act is of optional type, 122 C 191

constitutional provision should not be construed so as to defeat its evident purpose, but rather so as to give it effective operation and suppress the mischief at which it was aimed, 124 C 127

long settled legislative usage of controlling weight upon question of constitutionality of act, 124 C 184

——frequent adoption of curative acts applicable to single individual as bearing on constitutionality of act validating deficient notice to city of injury, 124 C 184

function of court is not to pass on wisdom of legislation but whether it is within restrictions of Constitution, 125 C 320

leaving decision of important constitutional question to appellate court, 126 C 375

presumption and intendment in favor of constitutionality, 126 C 377

where two parts of statute were severable, one part only was held unconstitutional, 126 C 379

where unconstitutional provision of act is definitely separable from rest of act, other provisions not affected, 126 C 634

main body of statute would not be invalidated by unconstitutionality of separable provision, 127 C 131

word "state" quite generally used as meaning individual States making up the union in contradistinction to United States as nation, 127 C 447

where statute is unconstitutional it is as though it never were passed, 127 C 705

intention to pass unconstitutional act will not be imputed to Legislature, 129 C 135

constitutionality of anti-dumping statute cannot be raised in application for mandamus, (dis.), 129 C 328

intent will not be attributed to Legislature to pass law which would contravene Constitution if statute can reasonably be construed to avoid such result, 129 C 645

§ 2. Impairing Obligation of Contract; Ex Post Facto and Retrospective Laws (U. S. I, §§ 9 and 10)

discharge under state insolvent law when valid, and when not, 3 C 253, 304, 472, 5 C 1, 6 C 480, 9 C 314

constitutional provision de impairment of contracts prevents forfeiture of charter of toll bridge company for failure to construct draw, unless charter reserves authority to compel, 4 C 54, 18 C 53

statute legalizing all previous marriages performed by ordained ministers not repugnant to United States Constitution, 4 C 209

retrospective act impairing vested rights is not necessarily void, 4 C 221, 28 C 101

statute regulating laying out of highways in cities and boroughs valid, 5 C 237

an ex post facto law relates to crimes only, 5 C 240

statute confirming levies of executions constitutional, 6 C 54, 190, 7 C 319, 350

retrospective law, if conformable to entire justice, is valid, 6 C 197

taxation of property given to ecclesiastical societies under act of 1702, 6 C 223, 7 C 335, 11 C 251, 36 C 116, 38 C 274

a legislative grant is a contract within meaning of Constitution, 7 C 48, 10 C 541, 18 C 53

——a consideration is unnecesary to support legislative grant, 10 C 541

act of Legislature granting a divorce, not void as impairing contract, 8 C 541

——though depriving creditor of husband of title by levy and execution, 8 C 541

"contract" within meaning of clause de impairing. 13 C 93

——what legislative acts, importing a contract, may be repealed, 13 C 96

acts reviving ferry between Hartford and East Hartford unconstitutional; impairment of charter, 16 C 149, 17 C 79

exclusive right of bridging within limits is a contract not to be impaired, 17 C 55

charters granted by State without reservation cannot be mo lified without company's consent, 17 C 55, 59, 18 C 64, 33 C 117

——assent to amendment is not to be inferred, 18 C 65

——public injuries arising from such grant how avoided, 17 C 59

all franchises emanating from the government are results of contracts, 17 C 462

——taking of franchise on compensation not violation of obligation of contracts, 17 C 462

statute de "reputation" of house of ill-fame; previous reputation admissible as tending to show its subsequent character, 17 C 473

——not opposed to clause in Constitution de ex post facto laws, 17 C 473

mere diversion of travel from chartered turnpike not unconstitutional, 18 C 451

act authorizing Superior Court to order sale of any real estate held in common *held* constitutional, 23 C 94

statute validating certain usurious contracts valid, 28 C 97

act establishing ferry *held* not violation of contract with bridge company, 29 C 210

state law validating void contract is no impairment of obligation of contract, 30 C 154

retrospective act allowing no deduction for usury, valid, 30 C 155

statutes affecting remedies, although retrospective, are constitutional, 30 C 324

act of 1861, de insolvent debtors, not in derogation of vested rights, 31 C 68
——right to remedy furnished by remedial act, not a vested right, 31 C 70
——such right may be altered by Legislature, 31 C 70
provision applies only to law operating on stipulations of contract, not to legislation of States relating to internal police, 31 C 261
——act de day of grace falling on holiday, taking effect after indorsement of note, operated upon rights of parties, 31 C 261
Legislature cannot repeal charter in which no such power is reserved, without corporation's consent, 33 C 117
statute exempting from taxation estate given to pious uses, not a contract, 36 C 126
——act of 1859, repealing it in part, is constitutional, 36 C 124
act not to be construed so as to impair obligation of contract, 42 C 524
repeal of charter does not per se impair contracts of company, 42 C 591
——but unfair division of assets by Legislature might give the objection force, 42 C 591
act of 1845, requiring an acceptance of amendment of charter before it became operative on company, is not a contract, 43 C 377
approval by railroad commissioners of abandonment of station is not a contract, 43 C 380
——subsequent act requiring trains to stop is constitutional, 43 C 380
——is not an attempt to annul and reverse judicial decree, 43 C 381
statute allowing State twenty peremptory challenges in capital cases not ex post facto, because applied to act committed prior to passage of law, 47 C 532
statute de lien by defendant for betterments is not an impairment of obligation of contract, 48 C 582
license to sell liquor granted by the State is not a contract between the State and the person licensed, 50 C 321
giving county commissioners authority to revoke liquor licenses does not impair the obligation of a contract, 50 C 328
statute imposing liability on railroads for fire started by locomotives, provided it is not started by property owner's negligence, does not impair charter contract authorizing use of fire in locomotives, 54 C 447
exclusive right to lay water pipes in street, acquired by contract, is protected, 55 C 9
legislation as to municipal corporations does not give rise to contract, 68 C 140
that legislation as to town impairs contract of an individual does not avail town, 68 C 155
clause de impairment of contracts does not prevent condemnation of shares of stock of a railroad, 77 C 422
retrospective legislation not unlawful, 77 C 528, 78 C 427
no vested right in forfeiture recoverable in qui tam action, 78 C 423
reasonable modification of remedy not impairment of contract; collection of assessments on stock of corporation, 79 C 165
——even though affecting pending action, 74 C 509
despite control of State over public property of municipal corporations, their investments in private enterprises are protected by constitutional guarantees securing private property, 80 C 646
power of Legislature to pass retrospective laws as to judicial procedure affecting pending actions, 81 C 213
law de usury does not impair obligation of contract, 83 C 1
to what contracts provision concerning impairment of contract applies; contracts protected in general, 83 C 3
amendments made to charter of private corporation without consent of all stockholders did not impair obligations of contract, 84 C 275
power of Legislature to alter charitable trust, 85 C 309
to take property held by trustees to protect debentures of a corporation and give it to receiver would impair contract, 89 C 657
retroactive effect of validating act upheld, 90 C 315
validation of tax liens on property foreclosed does not invalidate vested rights, 90 C 315
bar of Statute of Limitations may be lifted by later act, 93 C 413
retroactive law not necessarily invalid, 93 C 571
retroactive statute to collect cost of paupers' support does not impair contract obligations, 93 C 571
liability of surety on bond cannot be barred by later legislation, 95 C 10
machinery to enforce liability of surety on bond may be changed, 95 C 10
State, obligee on bond, may designate state officer to enforce it, 95 C 11
provision de ex post facto laws includes only criminal laws, 96 C 367
nature of provision forbidding "ex post facto" laws, 96 C 367
——does not apply to penalty imposed for failure to pay tax, 96 C 367
——that law is retrospective in itself does not make it invalid, 96 C 367
what constitutes impairment of obligation of contract, 97 C 8
——law compelling indemnity insurance company to settle loss without requiring judgment against insured and providing that it might be sued, if it did not settle in thirty

days, would impair obligation of existing policies, if applicable to them, 97 C 8
statutes always presumed to be intended to operate prospectively, 97 C 9
law refunding part of fees for liquor license by counties does not impair contract obligation, 99 C 386
modification by public utilities commission of rate contract between municipality and water company *held* valid, 101 C 151
validating acts not unconstitutional because retroactive, 104 C 579
contract between city and water company fixing rates, if indefinite or unreasonable in duration may be altered by public utilities commission, 106 C 575
——this does not violate contract clause or due process clause, 106 C 575
principles which govern validity of retroactive legislation, 107 C 697
validating act may cure defective or irregular assessment, but not one wholly void at its inception, 107 C 697
when general law creating tax exemption will be regarded as contractual and irrevocable, 108 C 246
Chapter 325, Public Acts of 1927, unconstitutional as to validating certain assessment, 108 C 246
validating act is necessarily retrospective but not therefore invalid, nor does it ordinarily impair obligation of contract as it gives effect to real intent of parties, 111 C 65
statute validating negotiability of mortgage notes containing provision for payment of taxes *held* unconstitutional, 111 C 65
——impairs obligation of pre-existing contract by changing its character, 111 C 65
retroactivity of succession tax on jointly owned property; act compared with New York act, 111 C 165
retrospective laws which impair obligation of contracts, or substantial vested rights, are unconstitutional, 112 C 129
void act cannot be validated so as to invade vested right or impair obligation of contract; parties have vested right to compensation as fixed by Workmen's Compensation Act in force at date of injury, 112 C 129
retroactive law seeking to validate void change in compensation laws is invasion of contract and unconstitutional as regards injuries occurring before its enactment, 112 C 129
right of action for negligence is a vested interest which Legislature may not constitutionally invade by retrospective legislation, 112 C 145
"vested rights" defined, 112 C 145
Legislature may provide that Common Pleas Court shall have jurisdiction to condemn liquor lawfully seized, 112 C 169
——proceeding is not criminal but in rem and provision as to ex post facto laws does not apply, 112 C 169
constitutionality of application of statute (Act of 1929) taxing transfers intended to take effect in possession and enjoyment at or after death of transferor where transfer was made before statute but death of transferor occurred thereafter, 118 C 233
——Coolidge v. Long *held* not applicable to instant case because here trust agreement created no vested rights in remainder, gift after life estates being to heirs of transferor, 118 C 233
——and case meets test of constitutionality in that transferor's death is generating cause of right in remainder, 118 C 233
——nor is it unconstitutional on ground of unfairly depleting assets of estate, as act imposes payment of tax on beneficiaries, 118 C 233
——nor as so arbitrary and inequitable as in itself to be in violation of constitutional guaranties, 118 C 233
constitutional protection of contract regards its essentials rather than form or mode of proceeding by which it is carried into execution, 121 C 219
——its obligation not impaired so long as remedy afforded is one which is complete and secures all the substantial rights of the parties, 121 C 219
——making parcels liable in inverse order of alienation in foreclosure of land, whether foreclosure is by sale or strict, 121 C 214
remedial statutes may be retrospective provided they do not impair contracts or disturb absolute vested rights, 124 C 183
——if irregularity sought to be cured consists in mode or manner of doing act which Legislature might have made immaterial by prior law, it may make same immaterial by subsequent law, 124 C 183
——when object is to correct innocent mistake and remedy resulting is impediment to enforcement of an obligation, if effect is to promote justice law should be sustained unless it conflicts with vested rights, 124 C 183
——special act validating deficient notice to city of injury caused by defective sidewalk upheld, 124 C 183
municipalities as political subdivisions of State, created by and having powers conferred by Legislature, are subject to its will, 124 C 184
——are liable to have rights and duties modified or abolished by it and not to be regarded as thereby being deprived of vested rights, 124 C 184
right of action is vested property right when it comes into existence under common law and is not given by statute as mere penalty or without equitable basis, 125 C 147
——to be vested right must be more than such a mere expectation as may be based upon

anticipated continuance of present general laws, 125 C 147
increase in punishment of conspiracy if applied to one which did not continue after act took effect would be ex post facto law and invalid, 126 C 86
statute imposing heavier penalty for a crime when it is still being carried on does not violate constitutional provision prohibiting State from passing ex post facto law, 127 C 547
——where information charged continuing conspiracy from 1930 to 1938, sentence imposed under statute passed in 1937 which increased penalty correct, 127 C 547
amendment to Unemployment Compensation Act, that in determining number of employees those of employer controlled by same interests as employer in question shall be counted, does not impair validity of State's contract with corporation, 128 C 214
——power of State to disregard the corporate fiction, 128 C 222

§ 3. Full Faith and Credit (U. S. IV, § 1)

notice when necessary to validity of judgment, 4 C 380, 6 C 508, 17 C 500, 31 C 224
equity may restrain prosecution here of a suit on a judgment fraudulently obtained in another State, 20 C 544
comity does not require our courts to enforce foreign contract valid there but prohibited here, 26 C 183
judgment of a state court has the same validity in the courts of every other State, as in the State where pronounced, 28 C 433, 96 C 271, 98 C 259
rule generally; judgment rendered in a foreign country; service while defendant is transiently in jurisdiction, 67 C 91
jurisdiction of a state court whose judgment is brought in question in another State is always open to inquiry, 67 C 105, 72 C 528
judgments in rem and in personam distinguished, 67 C 127
judgment as regards note of married woman, presented to commissioners on an estate here, 71 C 708, 74 C 247
statutes of United States as determining effect of foreign judgment, 73 C 389
judgment of federal court for another district stands on same footing as a domestic judgment, 74 C 652
conclusiveness of judgment as to meaning of statute of State where rendered, 79 C 175
effect of record that defendant appeared, 79 C 177
as applied to action here by receiver appointed in another State to enforce double liability of stockholders, 79 C 188, 82 C 702
a judgment subject to modification by court rendering it and to be enforced by contempt proceedings is not enforceable here, 80 C 1
proceedings for removal of foreign guardian do not create an estoppel in an action on his bond by his successor in office here, 80 C 111
applies to judgments of Probate Court, 81 C 686
need not recognize decree of divorce of other State, 88 C 689
appointment of receiver of foreign corporation not dependent on authority of foreign State, 91 C 96
extent that full faith and credit is given to foreign judicial proceedings, 91 C 96, 608
foreign decree of divorce a mensa et thoro is entitled to full faith and credit, 91 C 608, 96 C 271
sufficiency of record to prove judgment depends on law of State where rendered, to entitled it to "full faith and credit," 95 C 167
if foreign court thinks it can do entire justice, that it cannot enforce decree extraterritorially is of no consequence, 98 C 251
——judgment in Iowa court against Connecticut insurance company for overassessment of premiums, 98 C 251
full faith and credit must be given foreign judgment if rendered by court having jurisdiction of parties and subject matter, 98 C 254
full faith and credit clause as requiring our courts to recognize cause of action originating in another State, 103 C 406
when foreign receiver has absolute right to bring action in this State under full faith and credit clause; when only by comity, 104 C 665
this State must accept United States Supreme Court rules as to judgments entitled to full faith and credit, 108 C 386
what statutes are penal in international sense so that judgments founded thereon will not fall within full faith and credit provision, 108 C 386
full faith and credit clause; effect of bona fide residence on recognizing divorce in another State; admissibility of decree, 110 C 348
judgment obtained in one State as bar to action in another State; full faith and credit clause, 111 C 399
full faith and credit provision does not permit recovery for alimony pendente lite and counsel fees under decree in another State, where that has merged in final judgment, 113 C 310
analogy between superintendent of banks who has taken possession of bank and receiver, 119 C 83
——former is just as much a quasi or statutory assignee of right to enforce obligations as is receiver, 119 C 83
——and receiver being vested with right of action on behalf of creditors to enforce lia-

bility against stockholders, to deny him right to sue in courts of another State would be denial of full faith and credit clause in Constitution, 119 C 83
decree of alimony, where award is not within power of court to rescind or alter and has become vested, falls within full faith and credit clause of Constitution, 122 C 155
——constitutional provision requires only that the courts of other States give effect to it by ordinary remedies appropriate to action on judgment, 122 C 155
decisions of Supreme Court of United States de the giving of full faith and credit by one State where a spouse resides to decree of divorce obtained by other spouse in another State, reviewed, 128 C 628
decision of Florida court that husband had acquired residence in that State sufficient to comply with its laws concerning jurisdiction over divorce is binding on courts of this State, 128 C 628
——service of process on wife by ordinary mail, particularly where she entered special appearance and contested issue of jurisdiction, sufficient, 128 C 634

§ 4. Equal Protection of Laws; Privileges and Immunities of Citizens (U. S. IV, § 2; Amend. XIV, § 1; Conn. I (§§ 1 and 12)

whether act prohibiting schools for colored nonresidents of Connecticut is opposed to Constitution, quaere, 10 C 366
Article I, § 1, though broad in its scope, is limited to those who are parties to the social compact thus formed, and does not include slaves, 12 C 42
voluntarily bringing slave into this State is no violation of Article IV, § 2, 12 C 41
an assignment of property may be valid against citizens of one State and not against those of another, 14 C 583
liquor law of 1854 was not opposed to Fourteenth Amendment, 38 C 233
privileges and immunities of citizen of United States differ from those of citizens of a State; latter are therefore not protected against legislation by their own State abridging their privileges, 38 C 233
statutes de intoxicating liquors do not violate, 49 C 163
statute de liability for fire does not deny railroad company the equal protection of the laws, 54 C 447
Public Acts 1889, Chapter 167, de disclosures on trial for intoxication, does not violate as denying the equal protection of laws, 59 C 510
statute authorizing town and city officers to grant licenses for sale of goods, unconstitutional, 65 C 89
statute excluding from public schools all children not properly vaccinated not abridgment of privileges or immunities of citizens of the United States, 65 C 183
right to tax stock of nonresident at higher rate than that at which resident's stock is taxed; right of one State to debar citizen of another State from holding stock in its corporations or to condition that holding, 70 C 590, 73 C 255
provision de equal protection of laws applies only to persons physically present within the jurisdiction, 70 C 590
equality of taxation, 70 C 590, 73 C 255, 269, 74 C 449, 76 C 98, 236, 77 C 654, 90 C 662
provision de privileges and immunities; record must show that the persons affected are citizens of the United States to take advantage of this provision, 70 C 599
neither state nor federal Constitution contains provision, express or implied, requiring taxation to be equal and uniform, 73 C 255
"privileges and immunities" explained, 73 C 273
act authorizing city to sell land to a named person *held* valid, 75 C 103
provision as to uniformity not applicable to state succession tax, 76 C 235, 77 C 654
judgment against railroad for temporarily closing a highway as authorized by its charter upheld, 76 C 311
bulk sales act, being uniform in operation, sustained, 76 C 520
different classes may be treated differently; corporations and individuals, 76 C 567
statute authorizing cities to establish lighting plants by which private plants may be purchased *held* valid, 76 C 572
act authorizing cemetery association to condemn land of another similar association not violation of Article I, Connecticut Constitution, 77 C 90
law authorizing railroad companies to condemn shares of stock in certain cases does not violate Article I, Connecticut Constitution, 77 C 422
act limiting or reducing amount recoverable in all pending actions for forfeiture to nominal sum or defeating such actions altogether, not discriminatory, 78 C 429
law distinguishing between different classes of money lenders as to usury, valid when, 82 C 232, 83 C 1
right to engage in interstate commerce as privilege inherent in American citizenship, 82 C 364
a law taxing advertising signs is not an unjust discrimination, 90 C 662
rules as to selling milk in sealed bottles applying only to grocers not discriminatory, 91 C 67
graduated succession tax is valid, 93 C 657
test for determining validity of statutory classification in taxing statute, 94 C 63

statute requiring license to buy milk from producer and resell it, with provisions de proof of financial responsibility and bond, unconstitutional, 94 C 639

in applying Fourteenth Amendment it is presumed that public officers will act legally and impartially, 96 C 191

——hence it would not be violated by a city ordinance giving to chief of police unlimited discretion as to permitting speaking in public places, 96 C 191

penalty tax not unconstitutional because of its classification, 96 C 371

as aliens cannot attack statute as void under guarantees of state Constitution not applying to them, its enforcement against them does not deny them the equal protection of the law, 96 C 615

State may not exclude corporation engaged in service of United States or in interstate or foreign trade from doing business in it, 97 C 526

——right to make exaction on privilege of doing business here, 97 C 526

——levying tax on business done, 97 C 521

equal protection and due process clause of United States Constitution co-extensive with §§ 1 and 12 of Article First of Connecticut Constitution, 104 C 192

no law requires taxation to be equal and uniform, 104 C 192

equal protection of the law defined, 104 C 192

classification for taxation must be reasonable, not arbitrary, and uniform within the class to which it applies, 107 C 697

what classification is permissible in tax matters, 107 C 698

——special exception, having no sound basis, improper, 107 C 698

——statute validating assessments of lands against lessees in certain town, where statute requires assessment of lands against fee owners is invalid, 107 C 698

classification of motor vehicles apart from other vehicles as to duties and liabilities of drivers sustained, 108 C 371

——what classifications are justified, 108 C 371

——limiting liability of automobile driver to guest for negligence, 108 C 371

——distinction between gratuitous passengers and those taken for pay proper, 108 C 371

——primarily classification is for Legislature and courts interfere only where it is clearly unreasonable, 108 C 378

——Legislature may not suspend general law for special case, (dis.) 108 C 383

act making land leased by certain ecclesiastical society assessable against lessee is class legislation, 109 C 388

——is arbitrary and not based on difference having relation to subject of legislation, 109 C 388

——deprives lessee of equal protection of law guaranteed by federal and state Constitutions, 109 C 388

where zoning ordinance excepted certain cases where permit to build had been already secured, whole ordinance would not be held invalid as violating provision requiring equal protection of laws, 110 C 130

——it would not affect general provisions of ordinance, as exception is severable portion, 110 C 130

——hence on claim of one not within exception question of invalidity on this ground will not be considered, 110 C 130

statute imposing disability to sue on owner of unregistered vehicle or one driven by unlicensed operator *held* constitutional, 110 C 288

ordinance will not be deemed unconstitutional as discriminatory unless clearly so; burden to show this is on person attacking it, 110 C 291

discrimination among members of same class vitiates a municipal ordinance; but if it operates upon all within the class equally, it is good, 110 C 291

ordinance providing that goods may be offered for sale in public market only by producers who have grown them, constitutional, 110 C 291

——not discriminatory and classification reasonable, 110 C 291

quaere whether on establishment of building line permission to one owner to continue building which is over it, would not violate equal protection of the laws, 113 C 44

classification in statute against usury exempting bona fide mortgages of over five hundred dollars not unconstitutional, 113 C 91

tax on transfers to take effect in possession or enjoyment after death constitutional, 114 C 207

——is permissible classification of appropriate subject of taxation, 114 C 207

public service company may adopt reasonable classification of service and rates provided it treats alike all similarly circumstanced, 114 C 628

——it may make such classification as regards extensions of service, 114 C 628

distinction in nature and conduct of motor vehicle junk business and general junk justifies different regulations and restrictions, 116 C 458

quaere whether court could refuse to take jurisdiction of action between nonresidents for accident occurring in this State, under guarantee to citizens of each State of all privileges and immunities of citizens of several States, 117 C 683

fact that under druggist permits sales of liquor may be made without restriction as to hours or days whereas under package store permits there are such restrictions does not bring about unlawful discrimination, 118 C 249
for a public utilities company serving large municipality and smaller surrounding towns, to charge latter higher rate is not unlawful discrimination, 118 C 389
right of State to authorize traffic commission of city to establish taxi stand in connection with hotel, limiting its use to companies designated by hotel, 119 C 323
——Legislature is recognizing common-law right of abutter to control land in front of property and right to prevent its use without his permission except as public easement, 119 C 323
——limitation to hotel property justified by special need for regulation, 119 C 323
——but law should be construed to apply only to portions of highway of which hotel owner holds fee, 119 C 323
——so construed law presents no grounds of unlawful discrimination, 119 C 323
——act is exercise of police power of State in such a way as not to infringe on rights of abutting owner, 119 C 323
——quaere, as to situation where municipality limits to specified company use of stand in highway where individual does not own fee, 119 C 330
——or when Legislature attempts to establish stand without abutting owner's consent, 119 C 331
to make distinction between sale of optical goods by department store so as to require it to employ optometrist and other persons selling such goods, of doubtful validity, 119 C 677
exception of mortgages from usury statute not invalid as transgressing, 120 C 666
question of classification is for Legislature, and courts will not interfere unless it is unreasonable, 121 C 460
——Tenement House Act not violation of, 121 C 454
this clause is calculated to secure to all persons similarly situated equal protection under the law in the enjoyment of rights belonging to all such persons, 122 C 290
State may grant privileges to specified individuals without violating constitutional guaranty of equal protection, where sufficient reason exists, 124 C 184
——before court can interfere it must be able to say that there is no fair reason for the law which would not require with equal force its extension to others, 124 C 184
——so where act validating deficient notice to city of injury did not enlarge plaintiff's claim but merely removed bar to suit, and there were strong equities, the act was not invalid, 124 C 184
regulation interpreting exception of agricultural labor from Unemployment Compensation Act not denial of, 125 C 301
legislation permitting banks of certain character to receive more than 12 per cent interest not discriminatory, 125 C 314
ordinance exempting existing junk yards from requirement as to distance, not unreasonable discrimination, 125 C 478
exception of hotels from law prohibiting restaurants, cafes, etc., employing minors under sixteen and females between 10 p. m. and 6 a. m. not an illegal exception, 126 C 678
prohibition in Liquor Control Act against permittee accepting credit from stockholder of corporation manufacturing liquor and against latter extending such credit not an unconstitutional discrimination, 128 C 160
law which is uniform in its operation is not rendered invalid merely because of limited number of persons who will be affected by it, 128 C 165
primarily question of classification is one for Legislature, and courts will not interfere unless it is clearly unreasonable, 128 C 166
provisions of state and federal Constitutions do not require taxation to be equal and uniform, or prevent classification for purpose of legislation, 128 C 213
——but classification must be reasonable and rest upon some ground of difference having fair and substantial relation to object of legislation, so that all persons similarly circumstanced shall be treated alike, 128 C 213
——latitude wide in classifying property for taxation, 128 C 219
——Legislature has wide range of discretion and primarily this question is for it and courts will only interfere if classification is clearly unreasonable, 128 C 219
——amendment to Unemployment Compensation Act that, in determining number of employees, those of employer controlled by same interests as employer in question shall be counted, constitutional, 128 C 213
——designed to prevent avoidance of remedial objects of the legislation, 128 C 220
provisions of state and federal Constitutions have substantially same meaning and latter imposed no new limitation on powers of State, 128 C 219
numerical classification of nature used in Unemployment Compensation Act is valid, 128 C 220
Fair Trade Act not unconstitutional in permitting producer to discriminate between customers to whom it sells its products, 128 C 597
——producer allowed injunction against wholesaler who is also retailer who cut price of its products, 128 C 597

——plaintiff did not come into court with unclean hands by refusing to sell directly to defendant and was not debarred from injunctive relief, 128 C 597

Fair Trade Act not unconstitutional because it enables one seller of goods to fix price at which another may sell them, 128 C 597

statute forbidding use of drugs or instruments to prevent conception constitutional, particularly as Legislature might believe abstention from intercourse reasonable and practicable where pregnancy might result in death, 129 C 84

classification in statute providing that issuance of funeral director's license be restricted to relatives of deceased or disabled directors is unconstitutional, 129 C 129

——has no reasonable relationship with objectives of legislation, would grant exclusive privileges in conduct of ordinary lawful business, and is obnoxious to first section of Bill of Rights, 129 C 129

provision that person violating nonsupport statute may be prosecuted before any court in State in same manner as if offense had been committed in territorial jurisdiction of that court, constitutional, 129 C 570

neither power of State to prohibit liquor traffic nor legislative declaration that permit is a privilege not property renders inapplicable constitutional guaranties such as equal protection of law, 129 C 619

——in view of nature of business, scope of Legislature's power to regulate it is much broader than in ordinary business, 129 C 619

——nevertheless, police power of State to be used for common welfare, impartially and without unreasonable discrimination, 129 C 619

——Legislature may discriminate between liquor selling and other businesses but not between those engaged in same calling of selling liquor, 129 C 620

——provision that no permit shall be granted except to elector of town not discriminatory in view of the substantial differences between citizen who is elector and one who is not which are germane to subject and purposes of legislation, 129 C 620

no unconstitutional discrimination involved in classification where there is some natural and substantial difference germane to subject and purpose of legislation between classes, 129 C 620

§ 5. Deprivation of Life, Liberty or Property without Due Process of Law (U. S. Amend. V and XIV, § 1; Conn. I, §§ 9 and 12)

statute de sale of land held in common is constitutional, 23 C 97

statute authorizing appointment of receiver of partnership without notice to partners would not be valid, 41 C 307

act authorizing sale of life estate against remonstrance of remainderman is valid, 44 C 116

act arbitrarily making one person liable for another's acts, is void, 44 C 296

statute constituting liquors a nuisance if intended to be sold illegally and providing that no action should be maintained for their possession does not violate due process clause, 49 C 163

one who has been heard by duly constituted court has had due process of law, 49 C 166

making owner of vehicle liable for injury done by servant upheld, 51 C 468

owner cannot ordinarily be made liable for a lawful, reasonable and careful use of his property, 54 C 459

——but this principle is not immutable if the protection of persons or property requires a different rule, 54 C 459

statute de liability of railroad for fires does not conflict with Connecticut Constitution, Article I, Section 9, 54 C 459

statute de forfeiture of liquor license bond does not violate "due process of law," 55 C 30

health ordinance requiring physician to report infectious disease is not in conflict with Constitution, as a taking of property or as a deprivation of personal liberty, 56 C 225

Public Acts 1889, Chapter 220, de grade crossing, *held* not in conflict with, as not "due course of law" in limiting due proportion of town's expense, 58 C 532

——nor in conflict with Article I, Section 9 of Connecticut Constitution, 58 C 532

statutes de sale of liquors by druggist without a license *held* not to violate, 61 C 45

Public Acts 1889, Chapter 220, de grade crossing, does not violate due process clause, as authorizing railroad commissioners to establish their own jurisdiction, 62 C 540

statute permitting grand jurors to commit witnesses refusing to testify does not deny due process, 65 C 17

due process of law explained, 65 C 37, 70 C 253, 72 C 528, 77 C 422, 79 C 47, 81 C 537, 84 C 650

statute authorizing exclusion from school of children not vaccinated does not violate due process clause, 65 C 183

duty of court to direct verdict for defendant, when, 66 C 241, 91 C 442

court should see that no judgment is rendered against one who has no opportunity to be heard, 67 C 9

due process of law requires notice and hearing, 67 C 103, 84 C 650

——but does not include appeal, 76 C 540

jurisdiction of a state court whose judgment is brought in question in another State is always open to inquiry, 67 C 105, 72 C 528
court has power to prevent fraudulent advantage being gained by legal process, 68 C 472
summary proceedings for abatement of nuisance may constitute due process, 69 C 138
temporary restraint of person alleged to be insane pending proceedings to commit; limits of right of personal liberty, 70 C 253
increase in tax rate on stock of Connecticut corporaton owned by nonresident, where corporation must pay it, is valid, 70 C 590
Fourteenth Amendment permits impeachment of foreign judgment for want of notice, even against the record, 72 C 528
Fourteenth Amendment considered, 73 C 269
judgment against railroad for temporarily closing a highway as authorized by its charter upheld, 76 C 311
statute regulating sale of merchandise to prevent fraud does not violate due process clause, 76 C 515, 79 C 434
railroads constitute peculiar class, which may be vested with special privileges, 77 C 422
——statute de condemnation of stock of railroad constitutional, 77 C 417
guarantee of liberty does not include right to practice law, 79 C 55
unconstitutional to give no notice of building lines establishment, 81 C 305, 86 C 573, 88 C 78
right of State either to license and regulate or to prohibit sale of liquor not inconsistent with due process clause, 81 C 534
provision in Federal Employers' Liability Act that contracts between master and servant exempting former from liability are void, is invalid under Fifth Amendment of United States Constitution, 82 C 353
——overruled, 223 U. S. 1
final judgment is property which Legislature cannot disturb, 83 C 353
fundamental rights existing under and protected by Constitution are further protected by Fourteenth Amendment, which voids any act of state legislation in denial of fundamental law of its land, 85 C 349
——statute providing pension for civil war veterans declared invalid, 85 C 344
what constitutes due process of law, 86 C 151
necessity of notice in assessment proceedings; lack of it may be waived, 86 C 573
if act only valid if notice given, failure to expressly provide for notice in law does not render it unconstitutional, 88 C 81
no person can take redress for injury into his own hands, 88 C 368
property held by trustees as security for bonds cannot be taken and given to receiver without notice to bondholders, 89 C 657
statute authorizing seizure of implements used in fishing illegally does not violate due process clause, 90 C 584
Seventh and Fourteenth Amendments to United States Constitution do not control proceedings of state courts over jury trials, 91 C 432
tax on corporation doing business within State apportioned on relative tangible property in and out of State, valid, 94 C 47
——does not interfere with interstate commerce or violate due process of law clause, 94 C 47
——is not unreasonable or excessive, 94 C 47
unconstitutional not to provide for appeal to court from decision of dairy commissioner, 94 C 640
due process clause does not prevent State from making all needful regulations for the public welfare, without compensation, where regulations are reasonable, 95 C 358
Fourteenth Amendment not violated by law imposing penalty tax on estates where property not taxed during life of deceased, 96 C 368
——it does not take property of heirs nor representatives; hence not confiscatory, or open to charge of depriving them of property without due process, 96 C 362
"due process" clause as requiring review by courts of rulings of administrative board fixing rates or requiring expenditures claimed to be confiscatory, 97 C 454
bankruptcy proceedings lack elements of due process of law, 99 C 308
law refunding part of fees for liquor licenses by counties does not take property without due process, 99 C 378
——towns and counties cannot acquire any property not subject to power of Legislature to remit taxes or to control subordinate agencies, 99 C 378
provision that city department is to assess damages for land taken in first instance, to be conclusive unless appealed from, is proper if right of appeal to court is given, 100 C 604
——due process of law and right to just compensation assured, 100 C 604
State, by public utilities commission, may modify rates of service fixed by contract between utility and customer; exceptions, 101 C 151, 106 C 571
——this does not impair obligation of contract, or take property without due process of law, 101 C 151
notice and hearing are fundamental requisites of judicial procedure, 102 C 22
certificate to practice medicine confers valuable property right which cannot be taken away without due process, 103 C 65
——may be revoked by department of health without notice or hearing, since constitutional rights are preserved by right of ap-

peal to the Superior Court before final judgment, 103 C 65
equal protection and due process clause of United States Constitution coextensive with §§ 1 and 12 of Article First of Connecticut Constitution, 104 C 192
due process defined, 104 C 192
Legislature has power to make part of a city a separate taxing district even though some of land in such district receives no direct benefit, 104 C 192
due process of law may consist of proper legislative action, 104 C 193
statute making owner of dog liable for injury to person or property is constitutional, 105 C 88
State of decedent's domicil may not tax tangibles located in another State, 105 C 192
Fourteenth Amendment does not prevent tax of intangible property at residence of owner even though it is taxed elsewhere on basis of "business situs," 106 C 526
litigant has right to prove all the essential, material and relevant allegations of his pleadings, 107 C 454
refusal to try issues of fact raised in plea to jurisdiction after demurrer thereto sustained, *held* not a denial of due process, 107 C 545
statute de transfer of appeals *held* general legislation and not directed at a particular case, 108 C 74
revocation of license to practice medicine by medical board without hearing does not violate Fourteenth Amendment, where appeal, with right to hearing, is provided, 108 C 74
statute making owner of rented automobile liable for injury means tortious injury; absolute liability unconstitutional, 108 C 333
commitment by justices of the peace under the statute not a denial of due process of law, 110 C 482
——is a judicial function though proceeding begun as administrative proceeding, 110 C 482
citizen has no inherent right to enter legal profession; nothing in state Constitution or Fourteenth Amendment abridging powers of court and bar de admission to practice law, 111 C 50
taxation of exercise of power of appointment here when donor of power died in New York, unconstitutional, 111 C 594
procedure for removal of public utility commissioner on petition of citizens and action by attorney-general after court finding of breach of duty *held* to satisfy requirements of due process, 111 C 634
——due process defined, 111 C 647
common-law right of action for negligence cannot be taken away by retrospective legislation; would be setting validating act above explicit provision of Article I, § 12, Connecticut Constitution, guaranteeing due process, 112 C 151
Chapter 211 of Public Acts of 1929 de disposal of seized liquors *held* not unconstitutional as in violation of due process clause, 112 C 169
Fourth and Fifth Amendments as to search and seizure and due process of law operate only on powers delegated to federal government and do not limit rights of States, 112 C 173
statute providing for forfeiture of articles used in sale or transportation of liquors is constitutional though no provision made for protection of innocent owner or lienor, 112 C 618
provision that action by board in increasing tax without notice or hearing is "conclusive," would probably be unconstitutional if "conclusive" meant not subject to appeal, 113 C 14
statute providing for service on nonresident automobilist by service on state official and notice to automobilist upheld, 113 C 74, 756
——requirements are that there shall be reasonable probability of actual notice and reasonable opportunity to appear, 113 C 74
New York statute deprives husband of all interest in property wife had in her possession or control at time she obtained divorce; where husband acquiesced, *held* he was not denied due process of law, 113 C 308
conclusion in Hartley v. Vitiello that statute de service on nonresident driver by leaving process with commissioner and sending copy to defendant was effective to confer jurisdiction, affirmed, 116 C 48
due process clause does not prevent State from making needful regulations for public welfare, 116 C 458
——does not require compensation if regulations reasonable though owner is deprived of property, 116 C 458
——police power subject to test of subject-matter and reasonableness, 116 C 458
——both tests made by courts, 116 C 458
statute and order of public utilities commission under it requiring insurance by interstate carriers in company licensed to do business in this State *held* not to deprive carrier of due process of law in violation of Fourteenth Amendment, 122 C 290
due process defined, 122 C 296, 297
where district is formed to include property which is not and cannot be benefited directly or indirectly and will pay taxes only for benefit of other property, there is act of confiscation violative of due process clause, 122 C 392

——not so where though there is no present benefit it is reasonably probable one will accrue, 122 C 392

——though only present function of district was to supply water which defendant already had, property might be included where district had power to take watershed, provide sidewalks, drains and sewers, and more sanitary living conditions for defendant's workmen would result, 122 C 393

statute which permits State to appeal in criminal case with permission of trial court does not deprive accused of life or liberty without due process of law, 122 C 529

requirement is met if trial is had according to settled course of judicial proceedings, 122 C 541

zoning regulations are adopted in exercise of police power of State and to be valid must have rational relation to health, safety, welfare of community, 123 C 276

——where they serve these purposes, that their adoption causes loss to individual no reason to hold them invalid, 123 C 276

——but where value of property of individual is seriously affected by regulation especially applicable to it, whether regulation in fact tends to serve these purposes must be carefully considered, 123 C 276

where power to condemn for public use is delegated to corporation or individual, its decision is subject to judicial review though there is no express provision therefor and statute therefore not unconstitutional, 124 C 438

——and where statute provided that decision of appraisers should be final this did not preclude review by court of their decision as regards question of law, 124 C 438

regulation interpreting exception of agricultural labor from Unemployment Compensation Act not denial of, 125 C 301

statute forbidding solicitation of money for religious cause without certificate not invalid under due process clause as denial of freedom of religious worship or liberty of speech, 126 C 1

contraception statute *held* not to be deprivation of rights and liberties without due process, 126 C 413

privilege of judicial review of proceedings of administrative board satisfies requirements of due process clause, 126 C 633

if object of legislative enactment is within power of Legislature and statute bears reasonable relation to object sought to be accomplished, requirement of due process is met, 127 C 126

——unfair sales practice law, creating right for injunctive relief against sale or offer of sale of merchandise by competitor at less than cost with intent to injure or destroy competition *held* constitutional, 127 C 126

——quaere as to provision making proof of offer to sell or sale at less than cost prima facie evidence of intent to injure or destroy, 127 C 126

in appeal from assessment made by administrator, original assessment having been made ex parte and without notice, aggrieved party entitled, under Constitution, to full hearing after notice, 127 C 176

only basis for recovering double or treble damages for violation of rules of road under constitutional guaranties is that it is in nature of a qui tam action, 127 C 537

full hearing before civil service commission of appeals to it being required by law, no constitutional requirement for hearing de novo in appeal to Superior Court; usual rules de appeals from administrative board apply, 128 C 35

investigation by commission and finding based on it rather than evidence might result in violation of requirement of due process that one called upon to answer shall be confronted with evidence against him, 128 C 119

prohibition in Liquor Control Act against permittee accepting credit from stockholder of corporation manufacturing liquor and against latter extending such credit not violative of due process as being too indefinite, 128 C 161

provisions of state and federal Constitutions have substantially same meaning and latter imposed no new limitation on powers of State, 128 C 219

whether statute de issuance of certificate of approval for gas station unconstitutional because of delegation of power to administrative official without rules for guidance, quaere, 128 C 265

statute forbidding use of drugs or instruments to prevent conception constitutional, particularly as Legislature might believe abstention from intercourse reasonable and practicable where pregnancy might result in death, 129 C 84

where all statutory requirements as to notice are complied with, right of person to appeal from decree admitting will to probate and to hearing de novo is sufficient to constitute due process of law, even though he has no actual notice, 129 C 309

in view of broad provisions for appeal from probate decree with hearing de novo, failure of interested party to receive actual notice of hearing in that court does not constitute lack of due process of law, 129 C 309

where plaintiff made motion for hearing of new testimony de weekly wage, action of commissioner, on own initiative, terminating weekly payments and awarding specific compensation over objection that plaintiff

not prepared to meet issue was breach of due process of law, 129 C 591

§ 6. Just Compensation for Property Taken for Public Use (U. S. Amend. V; Conn. I, § 11)

consequential damage due to improvement of navigation not compensable, 9 C 436

private property taken for public use gives right of compensation, 14 C 152

city authorized to aid railroad may lay a tax to raise funds; not a violation of Constitution, de taking of private property, 15 C 501

taking property of inhabitant of city on execution against it is not opposed to, 16 C 381

owners of lands taken by railroad company to receive compensation, 17 C 59

prior franchise is subject to right of eminent domain, 17 C 60

town not to be deprived of its right to a ferry, without compensation or consent, 17 C 91

construction and effect of act enlarging charter of Hartford Bridge Company, 17 C 93

Legislature may, on paying compensation, destroy or impair a franchise, if for the public good, 17 C 461

damages assessed in layout of new street to be paid within reasonable time, 19 C 142

whether Legislature can direct layout of railroad, as of highway, quaere, 21 C 304

Legislature has no power to sanction taking private property for private use, 21 C 305, 72 C 488, 77 C 417

private property taken for railroad is taken for public use, 21 C 305

damages from layout of highway must be direct and not consequential, to require compensation, 21 C 313

taxation is not the taking of private property without compensation, 23 C 189, 32 C 130

forfeiture of liquors illegally kept, not in violation of Connecticut Constitution, Article I, § 11, 25 C 286

damages once assessed and paid for property injured by causeway covers further damage from improvements of causeway, 29 C 536

——informality in making assessment is cured by lapse of time, 29 C 535

when new ferry may be chartered without compensation to ancient one, 30 C 39

common council may order railroad bridge to be widened, when; not a taking of company's property without compensation, 32 C 241

private property cannot be taken for public use, without just compensation, 41 C 93

injury to private property by railroad bridge embankment, not a "taking" of land, 42 C 195

——company must compensate owner for the injury, 42 C 195, 199

resolution authorizing trustees to sell land and invest proceeds for all concerned is valid, 44 C 116

injury to land by excavating and filling street not a "taking," 44 C 250

act of 1872 de appointment New Haven harbor commissioners is constitutional, 45 C 374

theory is that damages shall be ascertained and paid before the land is taken, 49 C 402

——but liability cannot be evaded by taking the land in first instance, 49 C 402

meaning of land "taken" as applied to condemnation of land for railroad uses, 54 C 297

——payment a prerequisite to right to use or occupy the land, under act de removal of Asylum Street grade crossing, 54 C 297

statute de liability of railroad company for fires does not conflict with Article I, § 11, Connecticut Constitution, 54 C 459

city ordinance requiring physician to report infectious disease does not conflict with Article I, § 11, as a taking of private property for public use without compensation, 56 C 225

compelling railroad company to pay one-half of expense of bridge over highway is not a "taking" of property, 60 C 10

——railroad company cannot demand compensation above amount allowed by statute, 60 C 8

——expense arising from statutory obligation is not a legal element of damages, 60 C 10

land taken in legal establishment of harbor lines is taken for public uses, 60 C 291

land cannot be taken simply to improve landscape, 60 C 292

——whether use is public or not is a question for the courts, 60 C 291

forbidding further use of cemetery is not a taking for public use within, 62 C 392

statute permitting taking private property for public use without compensation invalid, 69 C 155, 72 C 551

right of eminent domain; compensation, 69 C 435

nuisance created by discharge of sewage justifiable upon ground of public necessity only upon payment of compensation, 69 C 668, 72 C 531, 76 C 435

right to compensation where street railway is authorized to cross land acquired by railroad from toll bridge company and used as causeway to bridge, 70 C 610

as to necessity for prepayment of damages, 70 C 628, 77 C 431

digging new channel in navigable waters not "taking" land of owner of wharf calling for compensation, 70 C 685, 71 C 65

layout of city street across track of railroad requires compensation, 72 C 225
just compensation in condemnation proceedings does not include costs of suit, 75 C 239
General Assembly cannot authorize taking of land without compensation, 75 C 343
what constitutes just compensation; provision for payment of past damage; annual payment, 76 C 435
power to take for public use extends to all property on making just compensation, 77 C 421
——stock of a corporation, 77 C 421, 78 C 3
right to compensation for property taken under condemnation proceedings may be waived by giving consent to the taking, 80 C 124, 90 C 179
State may authorize town to take a franchise without compensation, 81 C 62
that taking is under order of public utilities commission does not obviate necessity of payment, 81 C 581
just compensation for taking of toll bridge, 82 C 460
in eminent domain no constitutional right to be heard as to necessity, 86 C 151
what is public use, 87 C 193, 421, 89 C 671
cannot permit riparian rights to be taken away without compensation, 94 C 573
no constitutional taking of land until condemnation proceedings start, 95 C 1
no obligation on State to indemnify owner of property from damage done him by legitimate exercise of police power, 95 C 30, 357
compensation for taking property must be made within reasonable time; cannot be postponed until improvement made, 95 C 226
General Assembly can establish building lines without compensation, 95 C 358
whether use of manure on land near reservoir may be forbidden without compensation, quaere, 100 C 464
provision that city department is to assess damages for land taken in first instance, to be conclusive unless appealed from, is proper if right of appeal is given, 100 C 604
——due process of law and right to just compensation assured, 100 C 604
no right or interest in land, having market value, can be taken without compensation, 101 C 173
prohibition against taking property without compensation applies to improvements placed by one on another's land, 101 C 173
price of land taken would not have to be paid nor funds provided in advance under our law, 101 C 669
——sufficient if means for prompt ascertainment and certain payment of damages are provided, 101 C 669
——this is assumed in case of municipal corporation, 101 C 669
——but compensation must precede physical occupation of land, 101 C 675
——property is "taken" when, 101 C 679
abutter on highway cannot be deprived of light, air and view without compensation, 104 C 610, 637
building restriction covenant is an easement which cannot be taken under eminent domain without compensation, 108 C 359
no statute can take private property without just compensation, 109 C 621
statute appropriating definite sum for taking, unconstitutional when no provision to meet excess if just compensation requires more, 109 C 621
compensation must be prompt and certain, 109 C 631
regulations in exercise of police power may result in taking of property without compensation, 110 C 92
——and not unconstitutional unless unreasonable, destructive or confiscatory, 110 C 92
——limitations in magnitude of taking, 110 C 92
zoning legislation upheld as not taking property without just compensation, 110 C 92
building lines may be established in exercise of police power without compensation, 111 C 27
——when ordinance establishing them is deemed valid, 111 C 27
pollution of tidal waters over plaintiff's oyster beds by drainage from city *held* not to constitute taking of property without compensation, 112 C 199
establishment of new street line is a taking of land between it and old line and property owner entitled to damages though city permits portion of building to stand which encroaches over new line, 113 C 40
municipality cannot claim immunity for governmental act resulting naturally in trespass or nuisance; would be taking property without compensation, 113 C 84
where municipality acts under special law in assessing benefits and damages it is exercising right of eminent domain, 113 C 323
——cannot deny compensation if damages exceed benefits, on theory of police power, 113 C 323
due process clause does not prevent State from making needful regulations for public welfare, 116 C 458
——does not require compensation if regulations reasonable though owner is deprived of property, 116 C 458
——police power subject to test of subject-matter and reasonableness, 116 C 458
——both tests made by courts, 116 C 458
to construe charter as denying landowner right of judicial review of action of appraisers in condemnation proceedings would open

serious question of its constitutionality, 117 C 230
——process by which compensation is ascertained is judicial, 117 C 230
right to damages for change of grade in highway is created by legislative authority and is not within constitutional requirement of just compensation for taking of property, 117 C 499
rule that interest on award runs from time it is payable no denial of "just compensation" though award based on expenditures made by landowner theretofore, 117 C 499
basic consideration in deciding reasonable and proper rates of public utility is fair value of property, as just compensation consists in fair return on such reasonable value, 118 C 401
making parcels liable in inverse order of alienation in foreclosure of land, whether foreclosure is by sale or strict, does not deprive mortgagee of just compensation, 121 C 214
finding that incineration plant worked increase in value of property in district decisive of claim that its establishment worked unconstitutional taking, 123 C 258
damages resulting from measures taken in promotion of public welfare not considered taking of property for which compensation must be made, 123 C 267
statute prohibiting bathing in tributary to reservoir, 123 C 492
——though defendant deprived of valuable property right of bathing, statute does not constitute taking warranted only under eminent domain proceedings with compensation, 123 C 493
provision of Merritt Parkway act for payment by state treasurer of damages fully meets requirement that means must be provided to enable landowner to secure just compensation, 125 C 406
destruction of right of access from land to highway constitutes a taking entitling owner to compensation therefor, 125 C 407
when effect of assessment upon front foot basis made under charter provision is to assess sum in excess of actual benefits from the improvement it is in effect taking private property for public use without just compensation, 127 C 617
under constitutional provision, unless some property is taken no compensation need be made, 129 C 477

§ 7. Police Power

§ 8. ——In General

as a general proposition the police power resides in the State, not in the United States government, 59 C 84
——its exercise by the general government is limited to cases expressly or impliedly granted to it, 59 C 84
defined, 65 C 40, 81 C 534, 94 C 639, 95 C 359
Legislature may regulate any business harmful to the public health or safety or liable to create a nuisance, 65 C 484, 68 C 113, 94 C 643, 95 C 359
power of Legislature to declare matter a nuisance and to provide for its summary abatement; remedy and procedure on issue as to existence of nuisance in particular case, 69 C 135
as affected by interstate commerce clause in United States Constitution, 70 C 489, 82 C 352
nature and scope, 73 C 18, 75 C 343, 451, 76 C 102, 77 C 134, 326, 78 C 266, 79 C 439, 90 C 662, 94 C 639, 95 C 26, 328, 359
distinction between legislative and judicial functions, 73 C 18, 79 C 447
regulating ownership and use of property in general, 79 C 447
police power is the general power to govern; sovereignty, 81 C 534
damage caused in exercise of police power not recoverable, 86 C 561
private property is always subject to statutory regulation under the police power, 86 C 561
power interfered with only in clear cases, 94 C 642
must be in interest of public health, safety, or morals, 95 C 26
——and be reasonable, 95 C 328, 357
whether power properly exercised is for courts, 95 C 26, 357
no compensation under, for interference with property rights, 95 C 30, 357
impairment of property rights in exercise of police power not within constitutional inhibition, 95 C 30
constitutional provision against taking property or the "due process" clause not contravened by, 95 C 357
aesthetic consideration as basis for, 95 C 368
federal government may not exercise police power as such within State; effect of Eighteenth Amendment, 96 C 133
nature and extent in general, 96 C 192
where situation exists proper for legislative action, Legislature is sole judge as to degree of regulation, unless its action is prohibitive, destructive or confiscatory, 97 C 243
not confined to matters affecting health, safety or morality, 100 C 430
extends to matters in interest of public welfare and convenience, 100 C 430, 108 C 371
legislation under police power must be reasonable; Legislature is the final judge except in extreme cases, 100 C 430

General Assembly is repository of police power, 104 C 621
legislative department is judge within reasonable limits of what public convenience and welfare requires, 106 C 577
——but court will interfere where restrictions are unreasonable though not because law is unwise, 106 C 577
all property held subject to right of government to regulate its use; limitations of this right, 110 C 92
courts cannot substitute their judgment for that of Legislature where questions as to limitations of power are fairly debatable, 110 C 92
——existing conditions and present times to be regarded, 110 C 92
——relation of police power to prohibition against taking property without compensation largely one of magnitude, 110 C 92
all property held subject to right of State to reasonably regulate its use, 116 C 458
——within police power to regulate occupations and businesses which may be detrimental to public welfare, 116 C 458
regulation, reasonably applied, which will promote community development finds support in police power, 116 C 458
power is vested in Legislature in its broadest terms; methods by which it may restrict; may require license; large discretion vested in, 116 C 458
whether aesthetic considerations alone would be sufficient to warrant regulation or restriction, quaere, 116 C 458
——but they may be regarded in connection with recognized police power considerations, 116 C 458
——and if latter are present fact that aesthetic considerations also were regarded will not render regulation invalid, 116 C 458
due process clause does not prevent State from making needful regulations for public welfare, 116 C 458
——does not require compensation if regulations reasonable though owner is deprived of property, 116 C 458
——police power subject to test of subject-matter and reasonableness, 116 C 458
——both tests made by courts, 116 C 458
possession and enjoyment of property is accompanied by limitation that it will not impair equal enjoyment by others of their property, 116 C 458
in determining whether statute is within police power, courts may supplement statutory definition by facts within realm of judicial notice, 116 C 465
regulation may result to some extent in taking of property and yet not be deemed confiscatory or unreasonable, 123 C 258
all property of every person owned subject to police power in State, 123 C 492
——further comments on nature of power and its limitations, 123 C 495–7
right of State to limit use of property in exercise of police power even when prejudicial to pecuniary interest of owner, 123 C 492
——whether statute reasonable in quality and extent, question for court; every presumption in favor of validity, 123 C 492
valid exercise of police power must find justification in public welfare rather than enhancement or protection of private interests, 123 C 492
regulation may result practically in taking property, or restricting its use and yet not be deemed confiscatory or unreasonable, 123 C 492
while police power extends to all great public needs, there must be some reasonable basis for interference with right to carry on lawful business, 126 C 373
law, real purpose of which is to stifle competition, cannot be supported as exercise of police power unless there is some reasonable connection with health, safety, morals or general welfare, 126 C 373
exercise by States to conserve public safety and welfare, including health and morals, will not be interfered with if it has real and substantial relation thereto, 126 C 413
——Legislature primarily judge of matter and its police statutes held unconstitutional only when arbitrary or unreasonable, 126 C 413
civil liberty and natural rights of individual subject to limitation that he may not use them to injure fellow citizens or endanger vital interests of society, 126 C 413
——conduct of individual subject to such direction and restraint as public good requires, 126 C 413
essence of exercise of police power is that restrictions imposed by law have rational relationship to preservation or promotion of public welfare. (dis.) 128 C 266
police power of State to be used for common welfare, impartially and without unreasonable discrimination, 129 C 619

§ 9. ——Particular Cases and Situations

licenses to sell liquor form part of the police system of the State, 49 C 599
——this police power is sovereign and cannot be alienated, 49 C 599
——such license may be revoked at any time by legislative authority, 49 C 599
statute making owner of vehicle liable for injury inflicted by servant is constitutional as a reasonable exercise of police power, 51 C 470
ordinance having protection of health in view, viz., preventing of boating and fishing on reservoir, authorized by the Legislature, is a valid exercise of the police power, 55 C 384

State may require gratuitous service from its citizens for the protection of life and health, 56 C 226
——as the report by a physician of cases of infectious disease, 56 C 216
statute authorizing railroad commissioners to alter grade crossing is a constitutional exercise of the police power, 57 C 104
action of Legislature de removal of grade crossings *held* an exercise of the police power, 59 C 84
——Legislature may delegate this power to courts and committees, 59 C 83
police regulations affecting corporations are binding without assent of the corporations, 60 C 8, 62 C 538
statute de killing of game birds is not unconstitutional as restricting interstate commerce, 61 C 152
State may enact that game birds may be killed and sold, or held for sale only for domestic consumption, 61 C 152
forbidding the further use of land for cemetery, *held* a lawful exercise of the police power, 62 C 392
——not taking for public use within Article I, § 11, Constitution of Connecticut, 62 C 392
law de vaccination of school children sustained, 65 C 183
control of grade crossings; power of Legislature, 65 C 430, 68 C 158, 69 C 253, 70 C 316, 72 C 284, 488, 77 C 494, 80 C 54, 86 C 561
establishment and use of highways for travel, 65 C 432, 75 C 451
law de licensing persons transiently engaged in selling goods *held* unconstitutional, 65 C 479
ordinary business callings cannot be licensed; milk dealers, 67 C 550, 94 C 639
licensing collection of garbage, though part of it can be utilized, 68 C 112
discretion of Legislature as to making it criminal to keep a place of resort open on Sunday, 68 C 379
act de abatement of peach yellows upheld; destruction of trees required; fine provided not excessive; discretion of court; widespread fear of disease as basis for action, 69 C 124
prohibiting gambling, or transmitting money therefor, 70 C 489
prohibiting matter dangerous to public morals, etc.; publication of newspaper deemed injurious, 73 C 18
regulating or prohibiting sale of liquors, 73 C 232, 81 C 534
ordinance compelling clearing sidewalk of ice and snow within police power, 76 C 98
regulating sale of merchandise to prevent fraud, 76 C 521, 94 C 645
prohibiting amusements, etc., near fair ground, 77 C 131
power to license vendors and require deposit with state treasurer upheld, 77 C 326
regulating keeping of dogs, 79 C 433
requiring notice of sale of retail business, 79 C 434
what occupations State can regulate; "places of public accommodation"; barber shop is not such, 79 C 542
dangerous business may be restricted by large fee, 81 C 538
regulation of interstate commerce, by police power of State, 82 C 352
all property is held subject to police power; constructing curbs and sidewalks, 83 C 204, 86 C 561, 95 C 29, 328, 366
what laws necessary for public welfare peculiarly a field for Legislature; government supervision of employment bureaus, 86 C 142
to protect and preserve public health comes within police power; quarantine of diseases, 86 C 677
right to require payment for police and firemen at theatres comes within police power, 87 C 412
under police power, implements used in catching fish illegally may be seized; warrant not necessary, 90 C 584
licenses and fees therefor may be required under police power, 90 C 662
whether license is for tax or regulation is determined by its purpose, 90 C 662
regulating sale of food; milk in sealed bottles, 91 C 67
conditioning performance of contract of employment made elsewhere on acceptance of our Compensation Act is within, 91 C 528
order requiring relocation of street railway tracks within, 95 C 26
particular order may be invalid because expense of carrying it out is confiscatory, 95 C 26
power to review order of utilities commission in exercise of police power, 95 C 26
if issuance of permits is left to arbitrary will of officer, it is invalid, 95 C 328, 364
regulations on building by municipal ordinance within, 95 C 329
constitutionality of "town plan commission," 95 C 357
General Assembly can establish building lines without compensation, 95 C 357
can authorize town plan commission and require its approval of opening streets, 95 C 357
it may be made crime to sell article containing wood alcohol, without requiring knowledge of its presence, 96 C 102
regulation of motor vehicles, 97 C 244
regulation of jitneys, even though monopoly is created, is within power, 97 C 455

power of Legislature to require license for regulation of business; "jitney" service, 97 C 728
——that public utilities commission is to determine public necessity of operation over a certain route, number of vehicles needed, and who may operate does not invalidate law, 97 C 728
——this does not vest them with arbitrary power, 97 C 733
constitutionality of fish and game laws, 98 C 702
justifies license fee for vendors of milk; fee must be proportionate to cost of supervision, 100 C 101
regulation of nondangerous business limited, 100 C 101
forbidding clocks to display other than "standard time," 100 C 430
whether use of manure on land near reservoir may be forbidden without compensation, quaere, 100 C 464
State may, under police power, modify rates fixed by contract between public service corporation and customers, even where customer is a municipality, 101 C 151
——unless State has clearly delegated rate-making power to municipality, or unless rates are fixed by ordinance chartering the company, 101 C 151
right of State to punish one advocating overthrow of government by violence, 102 C 715
——so utterances inimical to public welfare, tending to corrupt good morals, incite to crime or disturb public peace, 102 C 715
revocation of license to practice medicine, 103 C 65
in regulating use of streets to protect public, municipal corporation is exercising police power of State, 103 C 198
State may delegate to city power to fix rates for public utility for definite and reasonable time, but not for indefinite time, as this would be surrender of police power, 106 C 562
public service rates, fixed by contract, may be modified by State in exercise of police power; exceptions, 106 C 563
General Assembly may regulate operation of motor vehicles by establishing arbitrary standards by which conduct of those who drive them shall be tested, 108 C 209
——forbidding reckless driving, 108 C 209
statute making one liable for "any damage" due to operation of automobile he has rented to another must mean any tortious damage to be valid, 108 C 333
——so construed it is within police power, 108 C 333
not confined to public health, safety or morality but may include matters of public welfare or convenience, 108 C 371
——power to control highways includes power to regulate motor vehicles, 108 C 371
——they may be classified separately from other vehicles as to duties and liabilities, 108 C 371
——what classification proper under police power, 108 C 371
limiting liability of automobile driver to guest for negligence, 108 C 371
imposing liability upon municipalities for bills of materialmen and laborers on public buildings is a proper exercise of the police power, 109 C 553
zoning legislation proper exercise of police power when it has rational relation to public health safety, welfare and prosperity of community, 110 C 92
——and is not in plain violation of constitutional provision, 110 C 92
——and is not so unreasonable as to be arbitrary, destructive or confiscatory, 110 C 92
——even though to some extent property is taken or its use destroyed, 110 C 92
government can declare business not nuisance per se to be in fact and law a nuisance in certain circumstances and localities, 110 C 92
prohibition in zoning regulations against rebuilding nonconforming building over certain per cent burned reasonable exercise of police power, 110 C 92
changing zone in which business is located so that its continuance is prohibited *held* not unreasonable under circumstances of case, 110 C 92
it is a necessary inference that exclusion from residential zone in zoning ordinance of most business uses has rational relation to health and welfare of community, 110 C 130
——hence to do so is within police power, 110 C 130
——by securing a permit for building and giving out contracts before ordinance took effect, one does not acquire vested right which may not be invaded by ordinance of general application, 110 C 130
establishment and control of public markets is within police power, 110 C 291
——to justify regulation of lawful business, it must appear to be in public interest and reasonably necessary, 110 C 291
——regulation must serve public health, safety, welfare, morality or convenience, in view of changing conditions, 110 C 293
building line may be established without compensation when, 111 C 27
——ordinance is to be deemed valid unless unreasonable or not adapted to serve public health, etc., 111 C 27
ordinance prohibiting construction of house within fifty feet of street without permit where no building line, not unconstitutional, 111 C 27

——no finding that permit was left to unlimited discretion of official, 111 C 27
regulation of production, marketing and sale of milk proper, 111 C 433
——either directly by Legislature or by delegation to board, officer or municipality or in concurrence, 111 C 433
——if Legislature fully regulates matter, action by municipality is void, 111 C 433
pollution of tidal waters over plaintiff's oyster beds by drainage from city *held* not to constitute taking of property without compensation, 112 C 199
establishment of building lines by town as exercise of police power, 113 C 325
removal of ashes and refuse by city as exercise of police powers, 114 C 551
building restrictions in building code which apply reasonably and fairly to all may be imposed under the police power, 115 C 406
motor vehicle junk business or junk yard *held* admissible subject for regulation within police power, 116 C 458
——may be nuisance depending on location and use, 116 C 458
——condition offensive to sight or hearing may be as much a menace to public welfare as one which offends sense of smell, 116 C 458
business may be regulated although not a nuisance per se, 116 C 458
——regulation of livery stables as analogous to junk yards, 116 C 458
delegation of regulatory duties to municipal officers, 116 C 458
provision that certificate of approval shall not issue unless it is found that unreasonable depreciation of surrounding property would not result *held* to exceed limitation upon exercise of police power, 116 C 458
——also provision that it shall not issue unless interests of municipality require establishment of junk yard at the location; business not charged with public use, 116 C 458
whether obligation on owner of tenement house to make ordinary repairs within leased apartment would have adequate basis in police power and would not run counter to other constitutional guaranties, quaere, 117 C 629
provision of statute that zoning board of appeals must find public convenience and necessity for proposed location of gasoline station not proper regulatory measure and unconstitutional, 118 C 174
that Legislature might vest in commission discretion to determine suitability of person and place for sale of liquor, not open to question, 118 C 249
——constitutional right of Legislature to provide for control of use and sale of liquor by pharmacists has been expressly upheld, 118 C 249
rights of State to authorize traffic commission of city to establish taxi stand in connection with hotel, limiting its use to companies designated by hotel, 119 C 323
——act is exercise of police power of State in such a way as not to infringe on rights of abutting owner, 119 C 323
regulation of sale of optical goods at fixed prices if reasonably adapted to protect public from physical injury or nervous impairment is valid, 119 C 667
——where finding did not contain facts enabling court to determine whether regulation had sufficient basis in protection of public, case remanded to have such facts developed, 119 C 667
distinction properly made between advertisements of optical goods not stating name of optometrist in charge of department in store and those which did state his name, 119 C 667
general right of State under its police powers to regulate travel by public service motor vehicles upon its highways and protect safety thereof, except as field is occupied by Congress as to interstate commerce, is well established, 122 C 289
——such protection may include requirement of financial responsibility, 122 C 289
——provision for insurance in adequately responsible company as substitute clearly within scope of general statutory requirement of such responsibility, 122 C 289
regulation may result to some extent in taking of property and yet not be deemed confiscatory or unreasonable, 123 C 258
——as in present case where establishment of incineration plant was in promotion of public welfare, 123 C 258
zoning regulations are adopted in exercise of police power of State and to be valid must have rational relation to health, safety, welfare of community, 123 C 276
——where they serve these purposes, that their adoption causes loss to individual no reason to hold them invalid, 123 C 276
——but where value of property of individual is seriously affected by regulation especially applicable to it, whether regulation in fact tends to serve these purposes must be carefully considered, 123 C 276
statute prohibiting bathing in tributary to reservoir, 123 C 492
——Legislature could reasonably prohibit it as endangering health of public, 123 C 492
——that private water company incidentally benefited by statute, nil sig., 123 C 493
——though defendant deprived of valuable property right of bathing, statute does not constitute taking warranted only under

eminent domain proceedings with compensation, 123 C 493
——other statutes, under which title may be taken to land, by providing compensation do not evidence legislative intent to do so in all cases where rights are restricted, 123 C 493
regulation of junk yards within proper exercise of, 125 C 478
plaintiffs have no legal ground of complaint because dimensions of their land insufficient to permit them to conform to requirements of ordinance, 125 C 478
power to adopt zoning regulations finds its justification in police power, 125 C 482
statute prohibiting signs showing sale price of gasoline on retail premises except on pumps, and of petroleum products on signs in excess of dimensions provided for gas price signs, unconstitutional, 126 C 374
contraception statute *held* constitutional, 126 C 413
tavern permit is a purely personal privilege and does not constitute property that Legislature may not regulate in exercise of police power, 126 C 451
law prohibiting restaurants, cafes, etc., from employing minors under sixteen or females between 10 p. m. and 6 a. m. valid exercise of police power, 126 C 678
——that it has little justification as to certain individuals within its scope and imposes hardship on them nil sig., if it applies equally and substantially promotes public health, morals or general welfare, 126 C 678
unfair sales practice law is legislation within scope of police power, 127 C 131
Unemployment Compensation Act is clearly within State's police power exercised in pursuance of public government purposes, 128 C 86
if administrative official has transgressed limitations upon police power in refusing certificate for location of gasoline station, there is an abuse of discretion, (dis.) 128 C 267
——inquiry whether there is sound ground for his action is proper matter for determination upon appeal, (dis.) 128 C 266
provision for issuance of funeral director's license to relative cannot be sustained under police power, having no relation to public health, safety or welfare, 129 C 133
State may absolutely prohibit manufacture, transportation, sale or possession of intoxicants; power to prohibit includes power to permit under prescribed conditions, 129 C 621
——it was in exercise of this police power that Liquor Control Act was passed, 129 C 621
——State has large discretion as to means employed to protect citizens against evil incident to liquor traffic, 129 C 622

§ 10. Provisions concerning Crime and Criminals

a prosecution for a common law offense does not require an indictment, 3 C 122, 60 C 94
Article I, § 8, Connecticut Constitution, applicable to search warrants only, 4 C 118
meaning of "indictment and information" in Article I, § 9, Connecticut Constitution, 12 C 451
accused has no constitutional right to be present at grand jury inquiry, 21 C 279, 47 C 95
separate search warrant for each suspected place not required, 27 C 455
——erroneous description of custody and ownership is immaterial, 27 C 456
statute de seizure of liquors unlawfully kept is constitutional, 29 C 479
form of oath required to procure warrant to seize liquors, 30 C 450
inferential construction of unconstitutionality, not allowable in aid of criminal, 30 C 458
clause de suspension of writ of habeas corpus has no reference to a reasonable delay occasioned in the disposition of the case, 33 C 321
act authorizing restraint of parent for abandoning child is constitutional, Connecticut Constitution, Article I, § 9, 35 C 540
penalties should be held excessive only in very clear cases, 39 C 484
limitation of argument in capital case to four hours a side, not in conflict with Connecticut Constitution, Article I, § 9, 47 C 535
——limitation as to time must be reasonable, 47 C 536
statute de "reputation" of place kept for sale of intoxicating liquors, is constitutional, 47 C 550
statutes de intoxicating liquors do not violate Amendments, Article V, 49 C 166
Public Acts 1889, Chapter 167, de disclosure on trial for intoxication, does not violate Connecticut Constitution, Article I, § 9, 59 C 520
law requiring one on trial for intoxication to disclose how he obtained liquor upheld, 59 C 520
§ 1610, Rev. 1888, in connection with § 1404 is not in conflict with Connecticut Constitution, Article I, § 9, 60 C 92
——life sentence is in law distinct from one for a term of years, 60 C 92
——although latter may cover lifetime of accused, 60 C 92
nature and limitations of doctrine of double jeopardy as applicable in this State; appeal by State in criminal case valid, 65 C 265

bail where State appeals in criminal prosecution, 65 C 265
unlawful seizure; papers taken from premises of accused by trespass as evidence, 67 C 305
a person convicted, imprisoned, and released on parole is, if he breaks such parole, still "charged with crime" and a "fugitive from justice," and hence subject to extradition, 68 C 441
power of Superior Court to admit to bail pending appeal to Supreme Court, 71 C 457
power of court to restrict counsel from commenting on severe penalty provided for offense, 75 C 55
Article I, §§ 8, 9 and 10 require written charge and notice, before justice of the peace can punish for contempt not committed in his presence, 75 C 355
acquittal of one crime no bar to prosecution for another and distinct crime, although the evidence may be substantially the same in each case, 77 C 201
in habeas corpus proceedings granting bail pending appeal, if proper at all, is discretionary, 78 C 150
extradition proceedings before Governor and effect of his finding, 78 C 150
statute penalizing keeping of a house "reputed" to be a house of ill fame does not violate Amendment VI, 82 C 112, 83 C 56, 551
discharge by justice of the peace not a bar to subsequent prosecution in court having jurisdiction of alleged offense, 83 C 286
every possible crime extraditable under Article IV, § 2, 84 C 370
usury statute *held* not unconstitutional because of size of fine, 89 C 1
granting bail and fixing amount is judicial or quasi judicial function, 89 C 298
search and seizure of instruments used in violating law, good, 90 C 584
definition of "fugitive from justice"; nonsupport while in Connecticut of wife and children in New York does not come within the rule; crime must be committed in demanding State; habeas corpus to test validity of extradition papers, 92 C 539
how far state's attorney may comment on accused's failure to explain incriminating evidence introduced by prosecution, 96 C 292
provision that accused is to be confronted by witnesses against him considered, 96 C 306
——does not prevent use of transcript of testimony of witness who has disappeared, where he testified at preliminary hearing in presence of accused and was cross-examined, 96 C 306
nature of provision forbidding excessive fines, 96 C 367
police officers on duty at fire are justified in seizing implements used to distill liquor illegally, 97 C 543
——no search warrant necessary; this not unreasonable search and seizure, 97 C 543
——use in evidence not compelling of accused to give testimony against himself, 97 C 543
Declaratory Judgment Act not invalid as imposing nonjudicial powers on courts, 98 C 551
Juvenile Court Act constitutional except in so far as it authorizes holding child without bail pending appeal, 99 C 70
guarantees protecting one accused of crime not applicable to Juvenile Court Act, which is not criminal proceeding, 99 C 70
——that court established in some places and not in others not an unreasonable discrimination, 99 C 70
provision that no one shall be arrested, detained or punished except in cases warranted by law applies as that is not limited to criminal proceedings, 99 C 70
——requires adequate provision for bail, 99 C 92
——but in habeas corpus person whose liberty is at stake may be committed to care of probation officer, 99 C 92
search and seizure without warrant not illegal unless unreasonable, 101 C 224
——reasonable where circumstances justify belief that crime is to be committed, 101 C 224
constitutional protections to criminals to be construed in light of public interest in the detection of crime, 101 C 224
admission of evidence obtained by unlawful search and seizure does not violate constitutional guarantees, 101 C 224
where officer enters saloon and all surroundings reasonably suggest that law is about to be violated, it is not unlawful for him to search proprietor and, on finding bottles, arrest him, 101 C 225
——though it were, bottle would be admissible in evidence, 101 C 231
——this would not be to compel accused to give evidence against himself, 101 C 232
law permitting accused to elect trial without a jury is constitutional, 102 C 49
right of accused to be confronted by witnesses against him, subject to recognized exceptions to hearsay rule, 103 C 511
statute making admissible a certified copy of analysis of liquor by a state chemist does not violate Constitution, 103 C 511
failure of accused to testify cannot be commented on; but if he does take stand, his omission to explain or deny incriminating facts may be, 105 C 115
it would be double jeopardy to rearraign accused where verdict rendered in his favor and State fails to get permission to appeal, 106 C 117

different criminal offenses may arise out of same transaction, 108 C 209
——to be regarded as identical only where same evidence would support conviction of both, 108 C 209
——operating motor vehicle recklessly, so as to endanger life or property and under influence of liquor, 108 C 209
——acquittal of charge of driving so as to endanger life or property does not bar prosecution for driving recklessly, 108 C 215
in criminal case trier can consider failure of accused to testify as to facts within his knowledge, 109 C 124
provision against accused being compelled to give evidence against himself only applies to prevent accused being compelled by legal process to incriminate himself on witness stand, 109 C 490
——does not forbid inference from his failure to testify, 109 C 490
requiring accused charged with nonsupport to give testimony that divorce was colorable as violation of § 9 of Article I, (dis.), 110 C 356
statute giving justice court of inquiry power to commit witness for refusal to testify not unconstitutional, 110 C 482
commitment of witness to jail until he consents to testify not in violation of Eighth Amendment of Constitution of United States, 110 C 482
——first ten amendments restrictive of national action only, 110 C 482
——and commitment not a punishment for breach of criminal law, 110 C 482
right of witness to refuse to answer incriminating questions; procedure explained, 110 C 488
——same rules apply to production of documents, 110 C 493
Constitution does not prohibit reasonable searches without a warrant, 112 C 169
——whether search is reasonable or not is question of fact, 112 C 169
fifteen to twenty-two years sentence for rape of young girl not excessive or unconstitutional, 113 C 785
right of personal liberty; arrest without warrant, 115 C 279
review by writ of error resulting in reversal and retrial of criminal case does not subject accused to double jeopardy, 118 C 373
——entire proceedings constitute but one putting in jeopardy, 118 C 373
that man is not compelled to give evidence against himself does not protect him from unfavorable inference from his exercise of privilege, 119 C 29
requirement that information inform accused of the "nature and cause of the accusation," 119 C 70
articles offered in evidence will not be excluded because they have been seized in violation of provision in our Constitution forbidding unreasonable search and seizure, 120 C 573
disability to recover rent for failure to comply with Tenement House Act is not "excessive fine," 121 C 454
statute which permits State to appeal in criminal case with permission of trial court does not subject accused to double jeopardy, abridge his privileges and immunities as citizen or deprive him of life or liberty without due process of law under Fourteenth Amendment, 122 C 529
permitting amendment of information so that it would state that crime was committed in another town and allowing State to offer further evidence did not place defendant in double jeopardy, 124 C 663
immunity guaranteed by Constitution against self-incriminating evidence extends to proceedings before grand jury, 126 C 60
——but where it is carrying on general investigation it does not protect person from being summoned and questioned, but only gives him right to claim immunity from answering particular questions, 126 C 61
——same principle applies to producing papers before grand jury upon subpoena duces tecum, 126 C 61
——and if papers are surrendered to officer serving subpoena, this constitutes waiver of any immunity, 126 C 61
this State has no constitutional directions that Legislature shall prescribe both minimum and maximum fines; lacking such a provision such a prescription is not mandatory, 126 C 413
benefit of provision against excessive bail or fines extends to fines fixed by Legislature, also to those imposed by court, 126 C 427
practice of instituting criminal proceedings except for capital crimes upon information of state's attorney without preliminary hearing not prohibited by Fourteenth Amendment, 127 C 544
though accused may not be compelled to incriminate himself on witness stand this does not protect him from unfavorable inference which may be drawn from exercise of privilege, 127 C 546, 568
——court's charge calling attention to failure of defendants to testify not in violation of constitutional rights or statute, 127 C 546
admission of documentary evidence does not violate constitutional requirement that an accused has a right to be confronted by witnesses against him, 127 C 599

§ 11. U. S. Constitution, Miscellaneous

old state bank law of Vermont was not opposed to Article I, § 10, 5 D 319

state insolvent law discharging debtor from all previous debts, void, 3 C 255
act of Congress incorporating United States Bank is constitutional, 4 C 321
act allowing United States Bank to sue in Circuit Courts is constitutional, 4 C 321
——assumpsit by United States Bank in a case arising under United States laws, 4 C 329
Congress cannot confer jurisdiction upon state courts over cases arising from penal laws of United States, 7 C 242, 247
meaning of expression "to regulate commerce," 12 C 20
——State may authorize collection of tolls on vessels for improvement of navigable river, 12 C 20
provisions of amendments to United States Constitution de trial by jury not applicable to proceedings in state courts, 12 C 251
act of state legislature de tolls, not a "regulation of commerce," unless it conflicts with actual exercise of congressional powers, 18 C 510
State may authorize private company to improve navigation and take tolls, 18 C 511
——such tolls are not a tonnage or other duty, 18 C 512
"regulation of commerce"; power of Congress extends only to streams navigable for commercial purposes, 22 C 183
act of 1854, de intemperance, is not a "regulation of commerce," 25 C 294
Congress cannot make a stamp an essential part of the state process, 35 C 46
——copy of stamped writ need not contain copy or memorandum of stamp, 35 C 47
power of Congress to affect competency of evidence in state courts, quaere, 35 C 240
law forbidding use of documents not having revenue stamps affixed not applicable in state courts, 35 C 240, 73 C 665
Congress cannot prevent party applying to state courts, when, 35 C 576
one born in the United States, whose father is an alien residing there, is a citizen of the United States and of the State where he is born, 54 C 45
health ordinance requiring physician to report infectious cases not invalid as imposing a form of servitude, 56 C 225–229
statute de taxation of railroad company not a tax on interstate commerce; but is a tax upon property as such located and used in this State, 60 C 334
statute prohibiting the killing of game birds for transportation out of the State does not violate clause de regulation of interstate commerce, 61 C 152
federal courts may entertain suit for construction of will; diversity of citizenship, 65 C 161
writ of error from United States Supreme Court should run to Superior Court when, 70 C 483
act prohibiting persons from transmitting money to any race track, whether within or without the State, there to be wagered, not unconstitutional as restriction on interstate commerce, 70 C 484
application of state laws as to attachments, 73 C 154
United States and state courts form one system, 73 C 154, 74 C 656
United States Constitution does not prohibit laws de sale of intoxicating liquors, 81 C 534
Article IV, § 4 restricts power of States, 81 C 536
several States may grant charter to the same corporation; does not violate prohibition against compacts between States, 82 C 73
so long as State preserves a republican form of government, Congress cannot interfere, 82 C 352
Congress cannot force States to accept change in fellow-servant rule, 82 C 352, 373
——overruled 223 U. S. 1
Constitution does not create right to engage in commerce, 82 C 352
Congress can alter substantive law in interstate commerce to make new rule of right, 82 C 352
Congress cannot impair State's rights to judicial, executive, legislative magistracies, 82 C 352
Congress cannot force jurisdiction on State, 82 C 352, 362
act remotely affecting commerce not justified if it invades State's powers, 82 C 352
state regulation incidentally affecting commerce, *held* valid, 82 C 352
act of April 22, 1908, interpreted; remedies for death created by act beyond power of Congress, 82 C 353, 373
——overruled, 223 U. S. 1
judicial plenary power of United States invested in United States Courts only, 82 C 353
United States Constitution, Article IV, § 4, and Fourteenth Amendment forbids taxation except for government use, 85 C 344
neither Seventh nor Fourteenth Amendment affects the power or controls the proceedings of state courts over jury trials, 91 C 432
act of Congress giving exclusive jurisdiction to federal courts supersedes law as to necessity of consent by court of receivership to litigate claim in another court, 93 C 165
tax on corporation doing business within State apportioned on relative tangible property in and out of State does not interfere with interstate commerce, 94 C 47

——is not unreasonable or excessive, 94 C 47
can compel corporation to disclose its federal income tax return, 94 C 65
Congress can give national banks right to act as fiduciaries, 94 C 648
Eighteenth Amendment construed, 96 C 130
——effect on state laws regulating sales of intoxicating liquors, 96 C 130
first ten amendments apply only to federal government, 96 C 310, 110 C 500
treaties as supreme law of land; duty of courts to construe, 97 C 212
Fourth and Fifth Amendments apply only to federal officers and courts, 97 C 543, 112 C 173
jurisdiction and procedure of state courts in naturalization, 98 C 436
Fourth and Fifth Amendments of Constitution apply only to federal agencies, 101 C 236
——decisions as to them not binding on state court, 101 C 235
Compensation Act not applicable to maritime contracts of employment, 102 C 511
power of State to legislate concerning maritime matters and remedies, 102 C 511
federal government has preempted entire field of interstate commerce; our courts must follow presumptions applied by federal courts, 104 C 728
application of Federal Employers' Liability Act to railroad employees, 105 C 122
——test for determining whether employee is engaged in interstate commerce, 105 C 122
law authorizing tax collectors to depute an officer to serve a tax warrant upheld, 106 C 230
decisions de signing bills by President reviewed, 109 C 621
inquiry into religious belief not permitted; historical review of requirement of an oath or affirmation, 109 C 721
Fourth and Fifth Amendments as to search and seizure and due process of law operate only on powers delegated to federal government and do not limit rights of States, 112 C 173
when action is to be considered as one against the State under Eleventh Amendment of the United States Constitution, 116 C 123
Bill of Rights attached to United States Constitution has operation only on powers delegated to federal government, 120 C 573
state law dealing only with state matters is valid though it may incidentally affect interstate commerce, unless it comes in conflict with some valid statute of United States on that subject, 122 C 275
provisions giving federal courts jurisdiction of actions between citizens of different States is not self-executing and Congress has conditioned right of removal in various ways, 122 C 588
——while assignment made simply to create diversity of citizenship will not afford basis of removal, assignment made to prevent such diversity will be effective to prevent removal, 122 C 588
federal Constitution does not require separate exercise by States of powers of regulation and taxation, 128 C 87
nothing in Connecticut or federal Constitutions is inconsistent with right of State either to license and regulate, or to prohibit, sale of intoxicating liquors, 128 C 166

§ 12. Connecticut Constitution

§ 13. ——Miscellaneous

extent of protection guaranteed by Article VI, § 8, 3 C 537
Article X, § 1 de oath, applicable only to executive officers appointed after adoption of Constitution, 5 C 278
local limits of ecclesiastical society not changed by Article VII, 6 C 223
Article I secures freedom of worship, 7 C 77, 16 C 516, 40 C 77
statute validating defective levies of execution is constitutional, 7 C 365
state Constitution made no change in the relation of master and servant, 12 C 42
Article I, § 8 did not apply to slaves, 12 C 43
act to take effect on adoption of proposed amendment *held* valid, 13 C 125
Legislature has power to divide towns and communities, 14 C 469
——also their corporate funds, 14 C 469, 472
effect of Article VII on former ecclesiastical societies not determined, 16 C 516
General Assembly cannot divide an ancient society, nor divide its funds and assign part to new society, 23 C 255
exclusive right to use streets for laying pipes is void as being a monopoly, 25 C 36
——Legislature cannot confer this exclusive right, 25 C 39
——effect of such right when treated as a public nuisance, 25 C 34
law authorizing town agents only to sell liquor is not a monopoly, 25 C 278
statute forbidding publication of proposals for selling lottery tickets does not infringe liberty of the press, 28 C 225
electors' meetings must be held at the time named in the Constitution, 30 C 603
whether a town can lawfully elect a single selectman, quaere, 32 C 109
towns originally constituting colony of Connecticut not corporations in proper sense prior to Constitution of 1639; review of history and power of towns, 32 C 131
free colored persons, born here, are citizens of this State, within amendment of 1845, Article VIII, 32 C 565

action of selectmen and town clerk de qualifications of persons applying to be admitted as electors cannot be controlled by mandamus, 34 C 406
Article X, § 3, contemplates no rights or franchises except those then existing, 36 C 448
statutes de intoxicating liquors do not violate Article I, § 12, 49 C 166
increase of fixed yearly salary of employee of fire department during good behavior, *held* within Twenty-fourth Amendment, 50 C 547
"police" defined; assessors are not local police, 52 C 215
town clerks and selectmen acting under Article VI, § 5 are quasi judicial officers, 53 C 535
——as such exempt from liability while acting in good faith and within their jurisdiction, 53 C 535
reappointed official entitled to increase of compensation passed before reappointment, 54 C 175
——amendment applies only to continuance under one appointment, 54 C 175
act de Asylum Street bridge crossing does not violate Amendment XXV, 54 C 295
——the payment by the city is only the discharge of its obligation to the public, 54 C 296
Amendment XXIV forbids payment to committee of common council performing ordinary services, where the office of councilman was without compensation, 54 C 443
——purpose and scope of amendment stated and applied, 54 C 443
statute de liability of railroad company for fires, does not conflict with Article I, § 12, 54 C 459–467
Public Acts 1889, Chapter 220, de grade crossing, is not in conflict with Article I, § 12, 58 C 533
Public Acts 1889, Chapter 125, de ex officio relation of secretary of state board of education to school committee, does not violate Article X, § 2, 59 C 50
——"local police" defined; does not include school officers, 59 C 59
Public Acts 1889, Chapter 125, does not conflict with the inherent right of towns to elect school committee, as towns have no such right, 59 C 58
who is an elector in general, 64 C 161
preamble construed; equality of rights, 65 C 489
local self-government as a part of our constitutional system, 67 C 236, 68 C 160
State can accept trust for institution for idiots, 67 C 245, 69 C 73
history of the growth of our Constitution, 68 C 164, 69 C 586
right and duty of State to protect rights of public in water above tidewater flat, 70 C 695
exemption from taxation; Yale University, 71 C 316, 92 C 108
nature of office of selectman, 71 C 724
——as agents of the town and agents of the law, 64 C 88, 85 C 498, 88 C 300
purpose of Article VI, § 6 is to secure exercise of free suffrage, 72 C 105
freedom of speech and the press, 73 C 18
effect of Declaration of Rights, 73 C 27, 94 C 643
Article I, §§ 5 and 6 do not confer right to publish matter injurious to the public morals or such as endangers the vital interests of society, 73 C 28
no provision for equality of taxation, 73 C 255, 74 C 449
to throw out ballot for immaterial error would not be to support the right of free suffrage, 75 C 15
meaning of "officers of local police," 75 C 347
origin of provision for annual election of selectmen, 75 C 462
exclusive privileges may be granted when, 76 C 566, 77 C 422
State can recognize honorary obligation, 76 C 567
Twenty-fourth Amendment as to increase of salaries of public officers during term construed, 78 C 545, 81 C 661, 95 C 199
Constitution should be construed to uphold its spirit; division into three departments, 78 C 565
whether statute could subject school fund to loss from cause subsequently arising, quaere, 81 C 9
Constitution deos not forbid liquor license law, 81 C 534
effect of Twenty-fourth Amendment on increase of pay of city employees and teachers, 81 C 661, 95 C 199
constitutional to fix arbitrary penalty for delay at railroad crossing, 82 C 1
usury law of 1907 constitutional, 82 C 232, 83 C 1
no constitutional question in action against moderator of election for damages, 82 C 324
State may regulate incidentally so as to affect interstate commerce, 82 C 352
usury act of 1907 not unconstitutional because of size of fine, 83 C 1
statute permitting evidence of repute as to house of ill fame good, 83 C 55
constitutionality of act making damages payable only when work done, 83 C 270
act against reputed house of ill fame constitutional, 83 C 550
constitutional to determine situs of property for taxation and apportionment of tax between towns, 83 C 561

constitutional to appeal irregular, unauthorized, unreasonable acts of railroad commissioners, 84 C 25
assessments must be limited to amount of special benefits, 84 C 383
no constitutional provision that taxes be equal or uniform, 85 C 119
state Constitution a grant, not a limit of power; judicial power forbidden to the legislature, 85 C 310, 96 C 190
act giving aid to soldiers resident in this State *held* unconstitutional, 85 C 345
as to act giving aid to those who served in the United States army and navy, quaere, 85 C 345
constitutional to have bureau's record, as to laborer's skill, open to certain public officers, 86 C 141
electoral rights lost by one subject to infamous punishment, 86 C 622
in Article VI, § 3, "inflicted" refers to penalty prescribed, not to that actually imposed, for the offense, 86 C 622
exemption of forest land from taxation constitutional, 89 C 394
constitutional guaranty of right of criticism by press, 90 C 98, 103
——right of newspaper to criticize public officer, 90 C 98
license statute for sign boards constitutional, 90 C 662
provision in Bill of Rights as to libel not applicable to civil actions, 91 C 432
constitutional to permit recovery of expenditures for paupers before passage of statute, 93 C 571
State may adopt definition in act of Congress by reference, 94 C 65
principle of equality of rights is embodied in Bill of Rights, 94 C 643
state officer may be obligee on bond to protect public, 95 C 11
ordinance of city forbidding speeches in public places except under license from chief of police, who has unlimited discretion, violates Bill of Rights, 96 C 190
power to determine what expressions endanger public peace and safety, 96 C 605
——matter abusive or derogatory of government or fostering opposition to organized government, 96 C 605
prima facie publications forbidden by Legislature do not violate guarantees as to freedom of speech, 96 C 605
——right of citizens to discuss public affairs, 96 C 612
——scope of guarantee, 96 C 619
aliens not entitled to protection of certain guarantees of Bill of Rights, 96 C 605, 624
law forbidding hunting on Sunday and making possession of implements prima facie evidence of guilt does not unlawfully restrict right to bear arms, 98 C 702
municipal corporation has no inherent rights to local self-government, 100 C 411, 104 C 238
——except such as given by federal or state Constitutions, 100 C 411
state Prohibition Enforcement Act may be stricter than federal act, 100 C 643
to hold that one appointed to a municipal office is not a "resident elector" as required by the charter does not invade constitutional provision as to who shall be electors, 103 C 158
——provision in Article IV, § 6, that "every elector shall be eligible to any office in this State" refers to officers of state government, 103 C 158
selectmen and town clerk are not exclusive judges where requirement is that of "resident elector," 103 C 167
equal protection and due process clause of United States Constitution coextensive with §§ 1 and 12 of Article First of Connecticut Constitution, 104 C 192
state taxation need not be equal and uniform, 104 C 192
law validating tax lists not properly sworn to is constitutional, 104 C 579
statute giving action for damages done by dog is constitutional, 105 C 88, 111 C 666
provision de school fund, 105 C 315
nature of tax warrant; no previous determination of liability necessary, 106 C 223
statute permitting tax collector to depute sheriff to serve warrant is valid, 106 C 223
statute authorizing municipalities to save public contractors from loss due to war conditions *held* constitutional, 106 C 642
authority to city to pay additional compensation to contractors will be held to authorize such agreements as do not violate Twenty-fourth Amendment, 106 C 642
——amendment does not include promise to city contractor of additional compensation for construction of reservoir where performance of original terms have become impossible due to unexpected war conditions, 106 C 642
statute making municipality liable for claims of materialmen and laborers on public buildings does not violate Twenty-fourth Amendment, though effect may be to compel town to pay more than balance due contractor for job, 109 C 547
practice as to time allowed for Governor to sign public acts for five sessions too short to show practical construction of Constitution, 109 C 623
——particularly in view of forty-two years of previous contrary practice, 109 C 623
constitutionality of zoning ordinance upheld, 111 C 616

one administrative officer cannot avoid performance of statutory duty on ground it would violate constitutional rights of another officer, 111 C 634
statute de liability of lessor of automobile does not apply to conditional sales; nor to damage caused by one who acquires possession wrongfully, from lessee, 113 C 237
provision that every elector shall be eligible to any office in State, relates only to officers of state government, 114 C 527
——and would not be authority for rule that every office holder must be elector, 114 C 527
truth of statement alleged as slanderous is a sufficient justification, 117 C 601
writ of error from judgment of City Court holding statute unconstitutional *held* properly brought by State, 118 C 373
in this State no constitutional provision that an accused shall not be placed twice in jeopardy, 118 C 381
——but principle is one greatly in public interest, 118 C 381
better for City Court to leave decision of constitutionality of legislative act to higher court, 119 C 323
——insurer under no obligation to assert unconstitutionality of act until sued under it, 119 C 416
——and not precluded from attacking its constitutionality where no benefit involved or accepted, 119 C 416
articles offered in evidence will not be excluded because they have been seized in violation of provision in our Constitution forbidding unreasonable search and seizure, 120 C 573
statute which permits State to appeal in criminal case with permission of trial court is not in violation of Article I, § 9, 122 C 538
——no "double jeopardy" clause in our Constitution, 122 C 538
statute forbidding solicitation of money for religious cause without certificate not invalid as denial of freedom of religious worship or liberty of speech and of press, 126 C 1
this State has no constitutional direction that Legislature shall prescribe both minimum and maximum fines; lacking such a provision such a prescription is not mandatory, 126 C 413
in establishing three distinct departments Constitution, by necessary implication, prescribed limitations and duties essential to independence of each, 126 C 627
nothing in Connecticut or federal Constitution is inconsistent with right of State either to license and regulate, or to prohibit, sale of intoxicating liquors, 128 C 166
§§ 1 and 12 of Article First of the Connecticut Constitution have substantially the same meaning as the Fourteenth Amendment of the U. S. Constitution, 128 C 219
statute forbidding use of drugs or instruments to prevent conception constitutional particularly as Legislature might believe abstention from intercourse reasonable and practicable where pregnancy might result in death, 129 C 84
provision that person violating nonsupport statute may be prosecuted before any court in State in same manner as if offense had been committed in territorial jurisdiction of that court, constitutional, 129 C 570
——our Constitution contains no provision restricting place of trial of persons accused of crime, 129 C 572

§ 14. ——Right to Trial by Jury (I, §§ 9 and 21)

Connecticut Constitution, Article I, § 9, gives no right of jury trial before justice, 4 C 78, 12 C 451
act of 1821, enlarging justice's jurisdiction, no impairment of right to jury trial, 4 C 538
provision in United States Constitution de trial by jury is not applicable to proceedings of state courts, 12 C 251
city charter de selection of jurors does not infringe right of jury trial, 12 C 252
a statute exempting military officers from suits at law for imposing fines not in violation of clause de trial by jury, 14 C 200
right does not prevent Legislature from authorizing courts to grant nonsuits, 24 C 468
act allowing justices to adjudge the forfeiture of liquors illegally kept is no impairment of jury trial, 25 C 286
act prohibiting appeal from judgment for limited sum is constitutional, 34 C 54, 38 C 240
what reasonable conditions are no infringement of right to jury trial, 34 C 54
act providing for court trial of probate appeals is constitutional, 35 C 455
statute de seizure of boat illegally taking oysters is unconstitutional since it gives no right of appeal, 37 C 323
statute allowing accused to select court or jury trial is constitutional, 46 C 363
——not opposed to public policy, 46 C 367
statute authorizing decree of ejectment on foreclosure is no infringement of right of jury trial, 46 C 526
issue of fact raised by return to alternative mandamus, to be tried by court, 47 C 341
——such having been the practice prior to state Constitution, 47 C 343

jurors *held* not to be public officers; requirements de jurors *held* not to violate Article VI, § 4, 48 C 535
jury law of 1880 *held* not in conflict with Connecticut Constitution, Article I, § 9, 48 C 547
statutes *held* not unconstitutional in not providing trial by jury for revocation of liquor license, 49 C 591, 50 C 324
no right exists to trial by jury before county commissioners; statute not unconstitutional as failing to provide for trial by jury, 50 C 324
provision of statute declaring determination of judge conclusive in contested election cases is constitutional, 51 C 125
——office of mayor not recognized by state Constitution, 51 C 125
charter of New Haven not unconstitutional as denying right of jury trial in City Court on charge of drunkenness, 51 C 422
practice of assessing damages by court after default in tort *held* constitutional, 53 C 2
——such practice was established before the adoption of the Constitution, 53 C 2
statute de proceedings for setting aside designation of natural oyster beds does not violate, 56 C 519
statute de disclosure on trial for intoxication does not violate, 59 C 510
judge may grant new trial for verdict against the evidence, 65 C 278, 69 C 186, 72 C 109, 74 C 638, 79 C 481
statute providing for jury of six only in summary process valid, 66 C 432
law de quieting title to land does not prohibit a jury trial in cases involving purely legal claims, 68 C 273
duty of jury to accept construction of statute placed upon it by court, 69 C 123
intent to waive right to jury trial to appear clearly; statute requiring separate docket for jury cases, 72 C 98
if equitable issues first tried are conclusive, jury may be refused, 73 C 486
"trial by jury"; power of judge to instruct as to law and advise as to fact; power to set aside verdict, 74 C 68, 75 C 678, 76 C 494, 81 C 624, 86 C 225
reasonable modifications of procedure do not violate clause de trial by jury; proof of will out of court, 74 C 257
jury must take law from the judge, 75 C 206
——historical review of trial by jury in Connecticut, 75 C 219
right to trial by jury, 75 C 232
requirement under guise of condemnation proceedings that past damages for trespass be determined by commission would violate right, 76 C 435
issues upon equitable claims arising in action to remove cloud from title are for jury, 78 C 96
requiring remittitur where excessive damages given not impairment of right to trial by jury, 78 C 296, 86 C 322
provision for jury trial does not apply to equitable actions, 79 C 262
questions of fact upon which but one conclusion is reasonably possible need not be submitted to jury for determination; this principle is basis for directed verdict, 81 C 343
power of equity court to submit issues to jury, 81 C 451, 83 C 109
when jury can reasonably reach but one verdict, court in civil case may direct verdict, 81 C 578, 91 C 443
on setting aside verdict, Supreme Court cannot direct opposite verdict, 81 C 578
no constitutional guaranty of jury at mayor's hearing to remove officer, 81 C 585
statute forbidding keeping house reputed to be house of ill fame does not violate right to trial by jury, 82 C 112, 83 C 56, 551
jury trial not of right in action for specific performance; judge may order, 82 C 293
on what constitutional right to jury trial depends, 85 C 159
right does not extend to appeals from probate, 90 C 48
neither Seventh nor Fourteenth Amendment affects the power or controls proceedings of state courts over jury trials, 91 C 432
constitutional requirements of jury trial limit power to set verdict aside, 91 C 457
law permitting accused to elect trial without a jury is constitutional, 102 C 49
no right to jury trial in election cases, 102 C 579
right to jury trial in general, 102 C 579
jury trial is only required where it was required when Constitution was adopted, 103 C 514
right to have jury pass on issues as to which men may reasonably disagree limits power of court to set aside verdict, 103 C 683
right of trial by jury guaranteed by Constitution does not concern issues of fact in equitable action, 113 C 594
——these were determinable by court before adoption of Constitution, 113 C 594
landowner not entitled to jury trial in condemnation proceedings, 117 C 237
action by beneficiary for damages for breach of trust in refusing to pay or deliver fund or making improper investment is one at law, triable by jury, 121 C 393
no jury trial allowed in Court of Probate or in Superior Court upon an appeal from a probate decree adjudicating a trustee's account, 121 C 393
where complaint was in equity, seeking reconveyance of property with accounting and claiming damages as incidental relief, it

was not of right triable by jury, 121 C 648
——although court has discretion to submit issues arising in it to jury, 121 C 649
injunction against enforcement of judgment in summary process by justice of peace, writ of error having been withdrawn, on ground justice had improperly denied jury trial, 121 C 702
where separate and distinct causes of action are joined, one at law and one in equity, either party has right to jury trial in cause of action at law, 125 C 615
——so in action for damages at law, fact that relief in equity in aid of or supplemental to it is asked will not destroy right to jury, 125 C 615; examples, 125 C 619
——but where essential right asserted is equitable and damages are sought in lieu or supplemental thereto, whole action is in equity and there is no right to jury, 125 C 616; examples, 125 C 619
——where plaintiff claimed accounting, that defendant turn over trust fund, and damages, no error in striking case from jury docket, 125 C 616
constitutional right to jury trial may be waived, 127 C 336
statutory regulations de jury docket and jury trial constitutional; should be construed so as to uphold right of reasonable regulation, 127 C 336

§ 15. ——The Legislative Department

§ 15(1). In General

power of Legislature to enact retrospective legislation, 4 C 209, 15 C 475, 28 C 97, 30 C 149, 327
the state Constitution is a limitation of the powers of the General Assembly in all cases covered by its provisions, 8 C 548, 13 C 125, 30 C 596, 61 C 363
——but in other respects the legislative powers are unimpaired, 8 C 548, 30 C 458, 61 C 366
where Constitution requires that an act should be done generally, General Assembly has power to prescribe the mode, 13 C 119, 22 C 633
Legislature has power to divide towns and communities; also their corporate funds, 14 C 469, 472
Legislature may modify or restrict future exercise of its own powers when it makes a contract which it cannot impair, 17 C 79
whether Legislature can direct layout of railroad, as of highway, quaere, 21 C 304
Legislature has no power to sanction taking private property for private use, 21 C 305
resolution of General Assembly passed prior to adoption of Constitution throwing whole burden of maintenance of bridge on one town not unconstitutional, 23 C 416
Legislature may give greater than common law effect to evidence, 25 C 203, 300
act of 1854, de prohibition of sale of liquor, is constitutional, 25 C 297
Legislature may charter turnpike company without directing therein as to location of road, 27 C 56
General Assembly has power to validate usurious contract, 28 C 97, 30 C 149
bridge repaired on condition that existing ferries be discontinued; grant of a new ferry a mile and a half below bridge *held* constitutional, 29 C 220
a grant by Legislature, unless exclusive, is no bar to similar grants, 29 C 225
statute providing that votes in an election of state officers might be taken outside the limits of the State *held* unconstitutional, 30 C 591
least possible public benefit authorizes Legislature to make a gift, 32 C 128
——judgment of Legislature as to question of policy is conclusive, 32 C 128
Legislature may contract or grant beyond the election of a new Legislature and such new Legislature cannot repudiate or repeal, 36 C 282
Constitution vests no judicial power in General Assembly, 36 C 446
special act granting administration after statute bar has attached is at least objectionable, 38 C 260
charter authorizing common council to pass ordinances, a violation of which should be a misdemeanor, is constitutional, 39 C 184
legislative inquiry into affairs of insurance company is not a judicial act; any attempt by Legislature to exercise judicial functions is void, 42 C 592
power of Legislature over assets of insurance company, 42 C 594
on repeal of statute creating an office, the office ceases to exist; such action not an assumption of judicial functions, 45 C 142
special act extending time for probate appeal *held* constitutional, 45 C 313
act authorizing tenant in tail to convey property in fee simple *held* constitutional, 51 C 45
General Assembly may at any time change laws of inheritance, 51 C 64
affirmative words often negate in their operation other things than those affirmed, 61 C 367
an enumeration of powers is uniformly held to forbid the things not enumerated, 61 C 367
——especially applicable in an instrument which is a limitation of powers, 61 C 367
power to "define" jurisdiction not power to grant or apportion, 64 C 452
——to give more effect to evidence than it had at common law, 66 C 163

——to shift burden of proof or change order of testimony, 79 C 351
——to enlarge methods of remedial justice, 78 C 100
——over public corporations, 68 C 140
legislative, judicial, and administrative functions overlap; administrative body may perform acts of nature of first two; power of such body to commit witness refusing to testify, 65 C 36, 69 C 595
broader power of our Legislature than that of other States, 67 C 465
may maintain highways through any agency it sees fit; establish highway district of several towns to free toll-bridge; determine towns benefited by highway improvement or leave it to courts; compel town to tax for another public agency, 68 C 131
towns have no inherent rights or rights superior to power of Legislature, 68 C 149
enactment of laws as bearing on extent of power of, 68 C 150
Legislature supreme lawmaking branch of government, 69 C 74
——it only can bind State to act as trustee, 69 C 74
of the Constitution in general; division into departments, 69 C 583, 78 C 545
power of, to reopen final judgments for trial before another tribunal, 71 C 43, 83 C 353
to authorize and provide compensation for act causing injury, 72 C 285
nature of judicial and legislative functions, 73 C 18, 78 C 428
limits of taxing power, 73 C 255, 85 C 344, 90 C 662
to compel street railway to pave for certain width about its track, 75 C 442, 471, 77 C 219
power over highways, 75 C 451
power to compel abutting owner to build sidewalks, pave, etc., or to impose cost on him, 75 C 452
power to impose burden of cleaning sidewalks and the like on particular class, 76 C 97
power to impose on town payment of officer appointed by State, 76 C 167
power to lay inheritance tax, 76 C 235
power to appoint commission to value condemned property, 76 C 566
county commissioners act as administrative officers, not as judges, in granting or refusing liquor license, 76 C 685
power to prohibit marriage of epileptics, 78 C 242
laws must be certain, 78 C 266
to pass retrospective legislation as to penalty in qui tam action, 78 C 423
power over public officers and their salaries; granting extra compensation without approval of Governor, 78 C 553
power of court and bar de admission of attorneys not abridged by Constitution, 79 C 55
whether it can subject school fund investment to chance of loss by reason of subsequent event, quaere, 81 C 9
power to pass retrospective laws as to judicial procedure affecting pending actions, 81 C 213
powers generally, 81 C 534
can fix arbitrary sum for obstructing railroad crossing, 82 C 1
Legislature has wide discretion in determining, and court in fixing, fine, 83 C 2
judicial power forbidden to Legislature, 83 C 310
final judgment cannot be disturbed by Legislature, 83 C 353
constitutional for Legislature to prescribe course of conduct that constitutes ordinary care, 83 C 503
can make it an offense to keep house "reputed" to be of ill fame, 83 C 550
Legislature determines what property shall be taxed, 85 C 124
cannot authorize change in application of charitable trust, 85 C 309
Constitution a grant, not a limitation of power; exercise of judicial power forbidden to Legislature, 85 C 319
legislative powers delegated to General Assembly cover whole field, 85 C 344
power of taxation resides in Legislature; its limits, 85 C 344, 90 C 662
public policy and public use determined by Legislature, 85 C 344
Article I of Connecticut Constitution is a limitation on legislative power, 85 C 348
Legislature determines what laws are essential, 86 C 142
can validate acts made in unconstitutional form, 87 C 507
grant of eminent domain not a "law" within Article III, Section 1; meaning of law, 87 C 507
power to ordain and establish courts includes power to fix terms of judge, 87 C 555
may grant beach land owned by the State, 88 C 8
whether Legislature can give courts power of pardon, quaere, 88 C 501
may provide for statutory crime though common law already defines it, 90 C 102
can dispense with constitutional methods for assessing, levying, and collecting taxes, 90 C 312
power to pass retroactive validating acts, 90 C 315
unexpressed intent to confer unconstitutional power not imputed to, 90 C 585
power to tax advertising space, 90 C 662
can fix tariff rates; reasonableness reviewable by court, 91 C 692

statutes effecting modes of redress where injury already suffered, are valid, 92 C 555
taxability of municipal bonds determined by General Assembly, not municipality, 94 C 543
power over discontinuance, alteration, and relocation of highways is supreme, 95 C 88
may not fill vacancies in its own membership, 95 C 414
may direct how vacancies in offices it creates may be filled, 95 C 414
Constitution is grant, not limitation of power, 96 C 190
——hence General Assembly cannot exercise or grant to municipality power violative of rights guaranteed in Bill of Rights, 96 C 190
law refunding part of fees for liquor licenses on prohibition becoming effective is valid, 99 C 378
——it does not grant a gratuity, 99 C 378
——it is not an exercise of judicial powers by the Legislature, 99 C 378
General Assembly may itself name members of municipal board, 100 C 407
Legislature may authorize park board to name their successors, 100 C 411
General Assembly cannot confer administrative functions upon the courts, but it may authorize them to review the actions of administrative bodies, 103 C 66
entire legislative power, including taxation, vested in General Assembly, subject only to constitutional limitations, 104 C 192
power of General Assembly to create and define limits of taxing district subject only to limitation that its exercise be not palpably arbitrary and unconstitutional, 104 C 192
power of General Assembly over taxation; may cure irregularities of taxing officials by validating acts, 104 C 579
General Assembly is repository of police power, 104 C 621
act authorizing tax collectors to depute sheriff or other officer to serve tax warrant not grant of judicial power to administrative officer, 106 C 231
broad discretion of Legislature to determine public welfare and convenience, 108 C 371
——wisdom of law not concern of courts but they should sustain act unless invalidity is clear beyond reasonable doubt, 108 C 371
power to regulate highways includes power to regulate motor vehicles, 108 C 371
may remove or provide method of removal of officer from office it has created, 111 C 634
validating act *held* invalid as encroachment upon judicial authority to determine constitutionality of statute, 112 C 130
right of action for negligence is vested and cannot be taken away by act validating guest statute; § 12 of Article First of Constitution guarantees remedy, 112 C 145
acts though void under State v McCook, 109 C 621, is valid law from date of validating acts re-enacting them, 112 C 169
Legislature may prescribe order in which creditors of an insolvent shall be paid, 114 C 658
the State may impose a succession tax upon personal property at any time before final distribution has been accomplished, 115 C 127
Legislature has power to provide that no child under sixteen can be convicted of crime but shall be dealt with only under juvenile court law, 115 C 589
——this is exercise of legislative power to define elements necessary to constitute crime, 115 C 593
provision that directors of reformatory may transfer incorrigible inmate to state prison, upheld, 116 C 140
regulation of optometry falls within power which Legislature may exercise to protect public health and welfare, 119 C 667
disability to recover rent for failure to comply with Tenement House Act is not "excessive fine," 121 C 454
court reluctant to say that Legislature has exceeded its powers in imposing excessive penalties, 121 C 460
statutes regulating sale of milk, to remedy conditions imperiling milk supply and industry and public, valid; also adequate provision for fixing prices by milk control board, 126 C 623
Legislature may determine choice of subject matter of taxation and extent and manner of tax, save as constitutional limitations may intervene, 128 C 562
Legislature has function of determining public policy of State, 129 C 93

§ 15(2). Delegation of Powers

power to appoint judges cannot be delegated by General Assembly to city government, 36 C 448
Legislature may authorize towns to aid in building railroads, 41 C 234
local option law constitutional; not a delegation of legislative power to towns, 42 C 369
provisional repeal of insurance company's charter; determination of whether charter should be repealed *held* not delegated to insurance commissioner, 42 C 593
act ordering railroad company to stop its trains, conditioned on erection of depot by town and its conveyance to company, is not a delegation of power, 43 C 383
General Assembly may create and empower commission to cause removal of railroad grade crossing, 54 C 297

——may authorize commission to condemn land by legal steps for this purpose, 54 C 298
the grant of powers of local legislation to municipal corporations does not violate the maxim that legislative power cannot be delegated, 60 C 103
statute giving cities power to regulate gaming is not unconstitutional as a delegation of legislative power, 60 C 103
——not unconstitutional because it contains no limitation of penalty, 60 C 103
——sufficient if such limitation is found in the ordinance, 60 C 104
may maintain highways through any agency it sees fit, 68 C 131
may authorize city to convey public land free of public use, 75 C 92
Legislature may authorize municipality to exercise governmental power, 80 C 478
——or may delegate it to subordinate boards, 88 C 471, 89 C 528
apportionment of cost of constructing bridge may be delegated to either judicial or executive branches, 88 C 471
can delegate administrative and executive powers, not legislative discretion, 89 C 528
can authorize city to regulate sale of milk, 91 C 68
may delegate administrative functions to board, 97 C 733
——thus may require public utilities commission to determine, after hearing, public necessity of operation of "jitney" route, number of "jitneys" to be operated, and who to operate them, 97 C 733
——this does not vest commission with arbitrary power, 97 C 733
control of highways rests with General Assembly; power to delegate it to municipalities or other bodies, 104 C 611
may delegate to city power to fix water rates for definite, reasonable time, 106 C 562
——not for indefinite time as this would be surrender of police power, 106 C 562
General Assembly may designate location of street railways or delegate power to municipality, 107 C 312
regulation of production, marketing and sale of milk, may be delegated by State to board or municipality; concurrent exercise, 111 C 433
statute concerning licensing of motor vehicle junk yard which in effect gives commissioner right to determine whether particular yard falls within statute, *held* unconstitutional, 116 C 458
statute giving municipal officer right to license junk yard dependent upon impartial exercise of reasonable discretion and with ample right to review by courts not improper delegation of power, 116 C 458
statute authorizing board to revoke license for immoral, dishonorable or unprofessional conduct by optometrist, in itself too uncertain to be enforceable, 119 C 678
——but construing provision in connection with purpose of act as including conduct showing person to be intellectually and morally incompetent or having committed an act likely to jeopardize the interest of the public, makes it valid, 119 C 678
Legislature cannot be expected to specifically forbid all improper practices likely to arise in practice of profession and may leave details to administering board, 119 C 678
——it can properly vest the board with power to make regulations adapted to assure competency of optometrists and to protect public, 119 C 679
Legislature having by enactment declared policies and fixed primary standards, may validly confer on administrative officers power to fill up details by prescribing rules and regulations, 125 C 301
——regulation interpreting exception of agricultural labor from Unemployment Compensation Act within delegatory power, 125 C 301
Legislature, in creating law complete in itself and designed for particular purpose, may expressly authorize administrative agency to fill up details by prescribing rules for operation and enforcement, 126 C 623
——but it is necessary that statute declare legislative policy, establish primary standards, or lay down intelligible principle to which agency must conform, with regard to public interest, with a degree of certainty and with procedure which, by appeal or otherwise, protects public and private interests, 126 C 623
——if it fails to prescribe limits of power with reasonable certainty or if limits are too broad, its attempt to delegate is nullity, 126 C 624
——review of cases passing on validity of milk control acts, 126 C 629–631.
——Milk Control Act and 1937 amendment do not prescribe such standards or principles, courses of procedure and rules as are requisite to justify delegation of powers attempted by price fixing section and that section is unconstitutional, 126 C 624
inherent in separation of governmental functions into three basic departments that Legislature cannot delegate lawmaking power to any other department or agency, 126 C 627
statute providing that person seeking license for sale of gasoline shall present to commissioner of motor vehicles certificate of approval of location from mayor sets up no sufficient guide for exercise of discretion in mayor and is unconstitutional, 128 C 701

§ 16. ——The Judicial Department

all courts in this State are of limited jurisdiction; facts showing jurisdiction must be alleged, 5 C 439

amendments to United States Constitution were not intended to limit the power of state courts, 12 C 252

county commissioners are not judges within meaning of Article V, 25 C 180

a justice of the peace is a county officer and has criminal jurisdiction throughout the county, 30 C 580

the courts cannot exercise legislative functions, 33 C 587

Supreme Court of Errors was constituted as a court for correction of errors of law only, 34 C 174

upon appeal to a judge of the Superior Court, allowed by a city charter, the judge is a special tribunal for a particular purpose, and not a court within meaning of Constitution, 35 C 73, 220

state courts retain jurisdiction except where the federal Constitution or Congress has granted exclusive jurisdiction to the federal courts, or the exercise of the jurisdiction is incompatible with such exercise by those courts, 35 C 381

judge of City Court, appointed by the common council under authority of an act, *held* to be a judge de facto, 36 C 432

Article V, § 3, vests no judicial power in General Assembly, 36 C 446

power to appoint judges cannot be delegated by General Assembly to city government, 36 C 448

whether an act is constitutional which provides that in the sickness or absence of the judge, a justice of the peace may be called in by the clerk to act as a judge, quaere, 38 C 449

——justice *held* to be a judge de facto, 38 C 449

special act extending time for probate appeal *held* constitutional, 45 C 313

county commissioners when trying causes for the revocation of licenses are not an inferior court in the constitutional sense, 49 C 591, 50 C 321

"inferior courts" are those whose judgment can be revised and error corrected by a higher tribunal, 49 C 596

act authorizing board of health to examine and remove nuisance dangerous to health *held* not invalid as conferring judicial powers on the board, 51 C 101

judge of Superior Court hearing an application for the appointment of a receiver is a special tribunal and not a court within the meaning of the Constitution, 63 C 580

Supreme Court is one for the correction of errors of law and not for the trial or retrial of questions of fact, 64 C 432

Legislature cannot impose duties beyond jurisdiction marked out by Constitution; power to "define" not power to grant, 64 C 453

——cannot require court to revalue real estate for taxation on appeal under special act, 73 C 646

——can modify exercise of jurisdiction, 64 C 454

power of judicial body to commit witness refusing to testify, 65 C 36

functions of courts on appeals in liquor license matters, 65 C 146, 79 C 5, 81 C 454, 89 C 310

Legislature can leave it to courts to determine towns benefited by highway improvement, 68 C 153

Legislature cannot impose administrative functions on judiciary; control of location, etc., of street railway, 69 C 576, 72 C 4, 78 C 301, 80 C 623, 85 C 517

determination as to what constitutes common convenience and necessity is judicial question, 71 C 50

nature of judicial and legislative functions, 73 C 18, 78 C 428

power of a municipality to impose conditions on construction of street railway is judicial question, 74 C 102

sufficiency of number of saloons for given locality, 75 C 358

special commission to determine what shall be included in purchase of lighting plant *held* not judges, 76 C 565

term of judge of City Court appointed to fill vacancy, 78 C 53

as to requiring court to determine best means of removing grade crossing, 78 C 301

duty of Legislature to provide for its support; power to change compensation of judges during term, 78 C 547

courts will not enter into question whether Legislature has followed correct procedure in passing act, 79 C 152

on appeal, courts can pass on lawfulness of action of municipal boards, 80 C 623

not unconstitutional to fail to have interpreter, 82 C 59

courts can refuse to accept duties cast on them by United States, 82 C 367

whether certain orders for location of street railway will injure landowner is judicial, not administrative question, 84 C 24

courts cannot review acts of administrative body unless illegal, 84 C 26

whether railroad commissioners have adequately protected public and landowner is judicial question, 84 C 40

when testimony at former hearing can be received in absence of witness, 84 C 152

where object of trust fails, courts can make change, not Legislature, 85 C 309

judicial power includes what, 85 C 320

when action or nonaction of administrative board can be reviewed, 85 C 517, 95 C 26
judge has only jurisdiction if the conditions limiting his powers have been fulfilled, 85 C 517
cannot act in nonjudicial matter; refusal to accept appraisal in condemnation does not make it nonjudicial, 85 C 664
judge's office is vacant after term fixed has expired, and Governor may fill it, 87 C 537
Legislature cannot extend judge's term by adding words "till successor is duly appointed," 87 C 537
disbarment of judge of probate as attorney does not affect his judicial status, 88 C 447
apportionment of cost of constructing bridge may be delegated to either judicial or executive branches, 88 C 471
appeal to Superior Court from public utilities commission; procedure, etc., 88 C 471, 89 C 537
constitutionality of probation law, 88 C 500
compensation commissioner is not a court, 89 C 148
notice to parties necessary if courts adjudicate conflicting rights, 91 C 501
can review reasonableness of street railway rates; cannot establish rates, 91 C 693
courts may be given power to relocate and abandon highways, 95 C 89
special law requiring judge to estimate damages for discontinuing highway and payment to state treasurer and deposit of bond calls for judicial action, 95 C 242
where appeal given in broad terms from administrative tribunal, it will be limited by constitutional prohibition against courts exercising administrative functions, 97 C 453
General Assembly cannot vest administrative functions in, 97 C 453
——hence appeal from administrative commission can raise only judicial and quasi-judicial questions, 97 C 453
——and statute giving full right of appeal will be limited by this principle, 97 C 453
——hence appeal does not lie from action of public utilities commission determining which of contending jitney-drivers should have permission to operate; and extent of service not reviewable, 97 C 453
——but as to its ruling that public convenience and necessity does not require jitney route over a particular route, quaere, 97 C 454
vesting of power of review in courts where claim is that rates fixed or expenditures required by administrative tribunal are confiscatory, 97 C 453
judge who has retired may be vested with powers to complete records, make findings, etc., 97 C 566
——provision enforcing retirement at age of seventy, construed, 97 C 569
Declaratory Judgment Act not invalid as imposing nonjudicial powers on the courts, 98 C 551
Juvenile Court Act constitutional except in so far as it authorizes holding child without bail pending appeal, 99 C 70
guarantees protecting one accused of crime not applicable to Juvenile Court Act, which is not criminal proceeding, 99 C 70
——that court established in some places and not in others not an unreasonable discrimination, 99 C 70
provision that no one shall be arrested, detained or punished except in cases warranted by law applies as that is not limited to criminal proceedings, 99 C 70
——requires adequate provision for bail, 99 C 92
——but in habeas corpus person whose liberty is at stake may be committed to care of probation officer, 99 C 92
Workmen's Compensation Act; voluntary acceptance precludes constitutional objections, 99 C 358
organization of judiciary as established by Constitution, 102 C 22
nature of court of justice of the peace, 102 C 23
——not such a court as is referred to in Article V, § 1 of our Constitution, 102 C 23
——justice over seventy can be compelled by mandamus to issue mittimus which is ministerial act, 102 C 23
no constitutional limitation on power of Superior Court to retry facts on appeal in workmen's compensation case, 102 C 511
Supreme Court is court of last resort for correction of errors, 102 C 529
——but jurisdiction is as to principles of law only and does not extend to trial or retrial of facts, 102 C 529
——determination of questions arising in election case as administrative not judicial function, 102 C 594
General Assembly cannot confer administrative functions upon the courts, but it may authorize them to review the actions of administrative bodies, 103 C 65
function of court in reviewing on appeal revocation of license to practice medicine with full hearing de novo, 103 C 66
——court inquires whether administrative board has acted illegally or exceeded its jurisdiction, 103 C 66
——but this involves finding of facts, as fraud in procuring certificate, 103 C 66
elective franchise can only be conferred or taken away by selectmen and town clerks; Superior Court has no jurisdiction, 103 C 157

constitutional jurisdiction of Supreme Court restricted to questions of law; cannot weigh and find facts, 104 C 412
Legislature is, within reasonable limits, judge of what public good requires; courts not concerned with wisdom of legislation, 108 C 371
statute giving justice court of inquiry power to commit witness for refusal to testify not unconstitutional, 110 C 482
——right to refuse to answer incriminating questions and limitations of right, 110 C 482
commitment by justices of the peace under the statute not a denial of due process of law, 110 C 482
——is a judicial function though proceeding begun as administrative proceeding, 110 C 482
nature of office of justice of peace, 110 C 495
——meaning of "cases" in defining jurisdiction, 110 C 495
——may be invested with administrative functions, 110 C 499
statute empowering courts to find material breach of duty by administrative officer, upon which he is removed from office, not an improper delegation of administrative function to court, 111 C 634
encroachment by Legislature upon judicial authority not to be tolerated, 112 C 144
——law creating presumption that all acts of Legislature were validly presented to Governor and validating any defective presentation is void, 112 C 144
ordinarily it is for the courts, not the Legislature, to determine constitutionality of laws, 112 C 144
Legislature has power to provide that no child under sixteen can be convicted of crime but shall be dealt with only under provisions of a law such as that establishing Juvenile Courts, 115 C 589
——whether it intended to do so in Juvenile Court Act not decided, 115 C 589
qualification of attorneys to practice pertains to judicial department but is administrative in its nature, 116 C 409
——may be delegated to bar examining committee, 116 C 409
in acting under statute de appeal from registrars in removing from or failing to include on party list name of elector, court exercises judicial as distinguished from administrative function, 124 C 271
——and so no constitutional question involved under Article II where it hears case de novo, 124 C 271
administrative duties cannot constitutionally be imposed on courts or judges in guise of an appeal, 125 C 346
administrative functions cannot constitutionally be vested in the courts, 129 C 642
——proper function of Superior Court in appeal from liquor control commission; effect of amendment that trial shall be de novo, 129 C 642

§ 17. ——The Executive Department

the declaration by the General Assembly of the result of an election for Governor is an indispensable part of the process, 61 C 359
——contemplates in all cases that the declaration shall be made by the General Assembly, 61 C 362
——by both houses acting jointly or concurrently, 61 C 362
——the declaration thus made is final and conclusive, 61 C 362
——declaration of one house without the concurrence of the other is of no effect and constitutes no legal election, 61 C 360
if no successor has been selected, Governor then in office remains the de jure as well as the de facto Governor, 61 C 360
Article IV, § 2, provides no evidence of election upon which General Assembly is to make declaration except the "fair list" and "returns," 61 C 362
——in absence of all legislation this should be the only evidence, 61 C 362
——"returns" mean what, 61 C 362
where the two houses refused to concur in a declaration but neither house had adjourned, *held* either could recede from its position, 61 C 365
General Assembly must choose Governor if at all on the "second day," 61 C 366, 62 C 284
——power of General Assembly to choose depends upon a previous examination of the returns and the finding that no person has received a majority, 61 C 367
——such examination and finding must be done at once, 61 C 368
——fact that unsuitable and insufficient laws do not permit a satisfactory examination and finding does not affect, 61 C 370
——"to find" is to ascertain by judicial inquiry, 61 C 369
General Assembly should examine the returns prescribed by § 240, Rev. 1888, 61 C 371
comptroller may exercise discretion in settlement of an unliquidated claim, 61 C 569
——but where the law fixes the amount, time, manner and payee, the act is purely ministerial, 61 C 569
duties of treasurer construed, 69 C 73
approval of act of General Assembly by Governor; time limit, 77 C 257
necessity of approval by Governor of private law, 78 C 557, 87 C 515
records of secretary as evidence of existence of act of General Assembly, 79 C 147

presentation of act to Governor through mistake pending reconsideration; cancellation of approval and return of bill, 79 C 151
power to fill vacancy under statute; need not wait until vacancy actually exists, 87 C 537
nature of office of sheriff, 89 C 684
"three days" in § 12 of Article IV means three legislative days, 109 C 624
acts signed by Governor more than three days after final adjournment unconstitutional under § 12 of Article IV, 109 C 624
——practice of Governors from 1919 to 1929 too short to predicate settled and established practice, 109 C 624
——especially since for forty-two years prior to 1919 Governors signed acts within three-day period, 109 C 624
——contrary construction would make laws dependent on unrestricted discretion of Governor, 109 C 624
——and would override power of General Assembly to designate day when acts become laws, 109 C 624
——and would be contrary to intention of framers of Constitution, 109 C 624
bill becomes law if signed after adjournment within three days, 109 C 624
constitutional provisions and decisions de signing bills by Governor reviewed, 109 C 624
acts of General Assembly must be approved within three days after adjournment, 112 C 129
——they should be forthwith presented to the Governor, 112 C 129
——laws of special session of 1929 re-enacting in bulk laws void under decision in McCook case are valid, 112 C 129
——but these bills could not affect rights under Compensation Act which had vested prior to their enactment, 112 C 129
——valid law in effect at time of injury must control, 112 C 129
——provisions in laws of special session that all acts will be presumed to have been presented within three-day period and validating any presentation not within three-day period were void as invasion of judicial authority, 112 C 129
under ruling in State v. McCook, 109 C 621, guest statute is unconstitutional, 112 C 145, 675
right of action for negligence is a vested interest which Legislature may not invade by retroactive legislation, 112 C 145
——the principle includes injuries to a person as well as to property, 112 C 145
——thus automobile guest law, void from failure of Governor's approval within time limited by Constitution, cannot be made to apply to accident happening before passage of act seeking to validate it, 112 C 145
where validating acts not only sought to validate acts unconstitutional because not signed by Governor, but also re-enacted them, they became valid existing law, 112 C 169
re-enactment of laws by special session of 1929 as making effective acts of official done thereafter under law otherwise void under McCook case, 112 C 236
validating act, invalid under McCook decision, was effective after its re-enactment at special session of 1929, as regards action thereafter brought, 112 C 543
act making insurers absolutely liable under policies against loss or damage for bodily injuries and providing that judgment creditor may sue insurer directly, void under McCook case because not signed by Governor within three days, 119 C 416
"The Governor shall have power to grant reprieves after conviction, in all cases except those of impeachment, until the end of the next session of the General Assembly, and no longer," construed, 124 C 121
——word "next" does not refer to session in existence when reprieve is granted but to one which begins thereafter, 124 C 124
——so reprieve may be granted during session expiring after adjournment, 124 C 124
——limitation upon period during which execution may be stayed by reprieve runs not from date of conviction but from date when reprieve is granted, 124 C 125
——so when conviction was before 1937 session a third reprieve granted in December, 1937, to expire February, 1938, was legal, 124 C 125
——reprieve granted based on fact of appeal to Supreme Court of United States, and one later granted when that appeal had not reached a final conclusion, amply justified, 124 C 127

CONTEMPT OF COURT

attachment for, lies on failure to comply with rule to restore files, K 235
definition of, 21 C 199
punishment for, is within discretion of court, 38 C 123
——exercise of discretion is not reviewable, 38 C 123
imprisonment for, to be in common jail only, 38 C 123
statutory limitation of imprisonment for, in-

applicable to contempt of chancery orders, 38 C 123
penalty for disobedience of court's orders is enforceable on scire facias by petitioner, 38 C 123
——where act is prohibited under penalty to petitioner, 38 C 124
fine and imprisonment for, merely punitive, 38 C 124
fine for, cannot be divided between State and petitioner, except in case of final decree, 38 C 124
party in, not entitled to discharge until costs and expenses are paid petitioner, 38 C 124
evidence de damages admissible to show character of contempt, 38 C 124
——other acts of contempt only admissible when, 38 C 125
punishment for, not a criminal proceeding, 43 C 267
Court of Common Pleas may punish for, 43 C 267
——this power is inherent in all courts independent of statute, 43 C 268, 44 C 412
punishment for, no bar to prosecution for breach of the peace, 43 C 267
jurisdiction once attached is not lost by flight of offender, 43 C 268
——court may pass sentence in offender's absence, 43 C 268
——at any reasonable time before close of term, 43 C 269
——no issue of process required, 43 C 269
——nor need record state when imprisonment is to begin, 43 C 269
costs accruing before sentence for, cannot be taxed, 43 C 270
adjudication of, by court of competent jurisdiction is final, 44 C 409
——in what case does a writ of error lie, 44 C 410
power of committee or public officer to commit for, should appear in appointing act, 45 C 385
——insurance commissioner has not this power, 45 C 385
disobeying injunction; agreement pending proceedings and its effect, 45 C 544
replevying liquors seized for condemnation pending appeal is a contempt of appellate court, 48 C 196
——may be punished by an attachment at common law, 48 C 197
statutes do not abolish all other common-law contempts, 48 C 196
practice in this State where respondents deny any intended disrespect to court, 48 C 200
party charged with, is not entitled to jury trial, 48 C 201
what constitutes a civil, and what a criminal, contempt, 52 C 155
statutes limit penalty to contempt in presence of court; other contempt determined by common law, 52 C 156
——where not committed in presence of court there must be proof and trial, 52 C 156
conduct of defendant in civil suit in refusing to appear *held* to justify finding of contempt, by trial court, 52 C 156, 158
criminal; when proof is required proceedings should be brought by informing officer, 52 C 157
criminal, brought and proceeded with as a civil cast, *held* irregular, 52 C 157
——court has no right to proceed to trial and judgment in absence of accused, 52 C 157
——affidavits attached to application *held* inadmissible on trial for, 52 C 157
——also deposition taken in absence of accused, 52 C 158
court cannot commit a witness summoned under statute and refusing to testify for a longer term than the debtor himself, 52 C 223
——and where witness is committed until he should answer, he may be released on habeas corpus, 52 C 223
civil, judgment of, can be reviewed on error, 58 C 497
——violation of injunction claimed; injunction *held* too vague and indefinite to found proceedings on, 58 C 502
punishment for, is due process of law, 59 C 520
statute de disclosures on trial for intoxication, *held* not invalid as making a contempt an act irrelevant to the dignity, duty and purpose of the court, 59 C 520
distinction between, and power to commit witness for refusal to answer, 65 C 32
procedure; necessity for and issuance of warrant; power of justice of the peace to punish for contempt not committed in his presence, quaere, 75 C 350
what publications commenting on trial may constitute; intent necessary; nature of proceeding; not necessary that defendant editor of newspaper have knowledge of publication before issuance of paper, or that it came to knowledge of judge or jury, 80 C 668
court having no criminal jurisdiction may punish, 80 C 671
violation of injunction, how remedied, 82 C 155, 83 C 426
conduct against dignity and authority of court is contempt, 82 C 262
when act is committed in presence of court, 82 C 262
jurisdiction of town court to punish contempt, 82 C 262
information officer should call court's attention to contempt, 82 C 262

criminal defined, 82 C 264
adjudication of contempt final; not reviewable by writ of error, 84 C 60
for purpose of jurisdiction, act reviewable to determine if it is contempt, 84 C 60
court own judge of contempt committed in its presence, 84 C 61
untruthful statement to get admission of testimony is contempt, 84 C 61
difficult to determine if attorney's statement true or false, 84 C 61
nature of, 84 C 93
how reviewed, 84 C 94
proceedings in, 84 C 95
one cannot purge himself by creating impossibility of performance of the act or deed, 93 C 298
whether officer making unlawful search and seizure guilty, quaere, 101 C 224
that injunction violated through independent contractor no excuse, 102 C 353
description of fence as ten feet in height, whereas it was eight feet, did not justify violation of injunction against its erection, 102 C 353
erection of fence for three hours after service of temporary injunction was wilful violation, 102 C 353
summary commitment of witness refusing to testify, not improper, 110 C 497
——power of justice of peace, 110 C 497
——nature of power, 110 C 500
——may be conditioned on performance of act required, 110 C 500
as means of enforcing judgment in habeas corpus, 111 C 243
——judgment sustained as not transgressing statutory limit of sixty days for commitment, 111 C 243
availability of remedy to enforce decree of alimony of another State in courts of this State, 122 C 155
equitable decree for money damages ordinarily enforced by proceedings in contempt, 125 C 84
——decree for payment of alimony should not include provision that if money not paid attachment for contempt should issue, 125 C 85

CONTINGENT REMAINDERS

See Wills § 42

CONTINUANCE

See Trial § 5

CONTRACEPTION

statute prohibiting sale of drug, medicinal article or instrument for prevention of conception; intent to allow exception as to physician prescribing for married woman when general health requires it negatived by absolute language of act and repeated refusals by legislature to inject such exception, 126 C 413
——statute *held* constitutional, 126 C 413
——"medicinal" does not characterize "instrument"; calendar used in "rhythm system" not an "instrument," 126 C 427
seizure of contraceptive materials under statute authorizing search warrant for apparatus used for gaming or lotteries, or for purpose of violating any of criminal laws, invalid, 126 C 428 and see Search and Seizure
statute forbidding use of drugs or instruments to prevent conception (§ 6246, Rev. 1930) and accessory statute (§ 6562, Rev. 1930) do not permit physician to prescribe contraceptives though pregnancy may result in death or serious injury to health, 129 C 84
——history of statute and repeated refusals of Legislature to inject exception controlling, 129 C 84
——change in personnel of Supreme Court no ground for reopening question previously settled in opinion in which two judges dissented, 129 C 84
——statute *held* constitutional, 129 C 84
——Legislature might believe absolute abstention from intercourse reasonable and practicable where pregnancy might cause death, 129 C 84

CONTRACTS

§ 1. In General
2. Form and Requisites; Certainty
3. Agreement or Mutual Assent
4. Consideration
5. ——In General; Necessity
6. ——Sufficiency
(1) General Principles
(2) Forbearance to Sue; Withdrawal
(3) Miscellaneous Cases
7. Legality and Validity
8. ——In General; Effect
9. ——Contracts against Public Policy
10. ——Contracts in Restraint of Trade
11. ——Contracts in Violation of Statute
12. ——Gambling or Wagering Contracts
13. ——Miscellaneous
14. ——Ratification
15. Construction
16. ——General Rules
17. ——Intent
18. ——Construction by Parties
19. ——Construing Two Instruments Together
20. ——Implied Terms
21. ——Time
22. ——Entire and Severable Contracts; Apportionment
23. ——Conditions
24. ——Building Contracts
25. ——Miscellaneous Cases
26. Novation; Merger; Substitution
27. Modification; Waiver
28. Rescission and Abandonment
29. ——In General; By Agreement
30. ——Invalidity of Contract or Failure of Consideration
31. ——Other Grounds for Rescission
32. ——Election to Rescind; Effect of Rescission
33. Performance or Breach
34. ——Generally
35. ——Substantial Performance
36. ——Excuses for Nonperformance
37. ——Anticipatory Breach; Repudiation; Prevention of Performance
38. ——Waiver
39. Quasi and Implied Contracts
40. ——In General; Miscellaneous Cases
41. ——Goods, Services and Expenditures
42. ——Money Paid; Unjust Enrichment
43. Actions
44. ——In General
45. ——Parties; Third Party Beneficiaries
46. ——Pleadings; Evidence
47. ——Construction by Court or Jury

§ 1 Contracts

See also Architects; Bailments; Bills and Notes; Brokers; Conflict of Laws § 2; Estoppel § 11; Evidence §§ 17, 30, 62; Insurance; Landlord and Tenant § 6; Limitation of Actions; Partnership; Questions of Law and Fact § 4; Sales; Specific Performance; Statute of Frauds; Vendor and Purchaser; Waiver § 6

§ 1. In General

written contract is presumed to contain whole contract made at same time de same subject, 8 C 14

——inapplicable to writing by third person in pursuance of original agreement, 8 C 14

definition of a contract, 31 C 265

court cannot make a contract for the parties, 49 C 170

license to sell liquor is not a contract between State and licensee, 49 C 598

legal duty of parties to remember terms of contract, 56 C 130

written contract excludes implied contract adding to or contradictory thereof, 58 C 117

rights of heirs apparent, may be subject of contract in equity, 64 C 153

construction of statute requiring advertisement for bids before making public contract, 65 C 334

no accessory contract without principal one, 74 C 70

nature of "option" contract; agreement to hold offer open, 76 C 642

no contract exists where required bond is not furnished, statute so requiring, 81 C 615

city ordinance unimportant unless upon record it appears applicable to contract, 82 C 252

when statement made to bidders, one of fact, not opinion, 82 C 623

court can presume contractor bidding for work is familiar with its kind and character, 82 C 639

gratuitous payment cannot be charged as expense of a sale, 83 C 196

what is an alternative contract; attachment bond as such, 86 C 616

violation of contract duty may be negligence, 89 C 606

contract for nonexisting company is personal obligation of those making it, 89 C 634

private agreement does not impair public use for which land is taken, 89 C 671

lienor's contract relations are with contractor, not owner of premises, 92 C 476

void contract cannot give rise to valid lien, 93 C 130

in matters of commercial law, uniformity of decision in state and federal courts is desirable, 98 C 414

State may, under police power, modify rates fixed by contract between public service corporation and customers, 101 C 151

one deliberately contracting for uncertain event cannot complain when uncertainty becomes certain, 104 C 551

statute creating liability, such as automobile rental act, may become by operation of law a part of every contract made on the subject, 108 C 333

enforceable agreement may be contained in the condition of a bond, 109 C 256

right of contracting party to rely on express statements of existing facts; when there is no duty to investigate, 111 C 53

one whose rights are subject to state restriction cannot remove them from power of the State by making a contract about them, 118 C 79

——the contract will carry the infirmity of the subject-matter, 118 C 79

contracts must be understood as made in reference to possible interference of the government, and no obligation of contract can extend to defeat the legitimate government authority, 118 C 79

where person of maturity who can read and write accepts contract, notice of contents imputed to him if he negligently fails to read it, 118 C 554

——except if there is fraud or artifice, or mistake not due to negligence, or if nothing is done to mislead him or put him off guard, 118 C 562

warranty must be incident to contract between the parties; no warranty that officer of corporation had power to represent that it would guarantee purchaser of stock against loss where no contract between him and purchaser, 128 C 52

§ 2. Form and Requisites; Certainty

form of contract to correspond with real intent and object, 15 C 513

——rule of policy as regards rights of creditors, 15 C 513

writing referred to may become part of contract, 22 C 245

bond not signed by surety or authorized by him to be signed, is not binding on him, 41 C 192, 196

what constitutes "written contract," 77 C 279

contract to sell what one needs in his business for stated time, seems valid, 81 C 479

no contract exists when required bond is not furnished, 81 C 615

giving note made indefinite obligation definite, 82 C 600

failure of vendor's salesman to countersign order does not prevent completed contract, 83 C 527
signature of corporation followed by name of officer is contract of corporation, not individual, 85 C 215
if corporation members sign individually and nothing in body of contract purports to bind corporation, not contract of corporation, 88 C 385
lease in name of president of corporation regarded in equity as lease of corporation, 93 C 633
accord and satisfaction is contract; requires consideration and meeting of minds, 94 C 652
agreement that provision will be made so that promisee will receive an income of "$2500 or $3000 a year" not too uncertain for enforcement, 96 C 471
——obligation was fixed, only method of carrying it out was indefinite, 96 C 471
promise originally vague and indefinite may become enforceable by partial performance, 99 C 362
part of written agreement may be below signature, 101 C 323
contract for sale of sugar *held* sufficiently definite and certain, 103 C 633
negotiations for change in elevator specifications *held* too indefinite to alter original contract, 104 C 430
predating contract to correspond with date of bond given to ensure its performance, 104 C 551
contract for sale of real estate which fails to describe terms of mortgage to be assumed, is void for indefiniteness, 107 C 181
receipt for automobile left at garage reading "all property at owner's risk" not contract, 109 C 365
when terms and conditions printed upon letterhead or contract form are part of contract, question of intent, 109 C 365
——presumption that recipient assents rebutted by showing no knowledge, 109 C 365
notes secured by construction mortgage *held* sufficiently certain to be valid, 110 C 4
instrument not a specialty unless signed and sealed by maker, 110 C 413
addition of "seal" or "L. S." does not make instrument a specialty unless it purports or was intended to be such, 110 C 413
contract signed by agent in own name engaging plaintiff to sell lots owned by principal *held* binding on latter, 110 C 452
undertaking by broker to be lenient with margin customer in time of stress not too indefinite to be enforceable, 113 C 366
certificate of benefit to employee providing that it did not create contract or confer legal rights and that employee might leave or be discharged at any time or defendant discontinue plan, *held* to create a valid contract, 116 C 357
agreement too indefinite and vague for enforcement at inception may be made definite by entire or partial performance and thereby become binding, 119 C 289
——thus contract of employment for indefinite time at weekly salary to be agreed upon from time to time, rendered enforceable by employee continuing in employment and accepting wages which were offered him, 119 C 289
contract does not become effective where subject-matter with which it deals is not in existence at time agreement made, 121 C 609
agreement that plaintiff was to have exclusive agency to sell defendant's products, with right in plaintiff to cancel at any time, was no contract, 127 C 680
where contract specified "there is no agreement, verbal or otherwise, which is not set down herein," *held* statements in prospectus sent purchaser of heating equipment by seller were not part of contract as warranties, 128 C 100

§ 3. Agreement or Mutual Assent

there is no contract if acceptance does not follow terms of offer, 3 C 362
disability of one under overseer, as to contracts, 3 C 591, 13 C 244
acceptance of terms offered by letter, must be made in a reasonable time, 12 C 432
when acceptance is a matter of law, 12 C 481
no meeting of minds; misunderstanding as to quantity; evidence of knowledge of mistake and of ignorance of defendant is admissible, 24 C 517
acceptance of order, by writing "accepted," may be shown to have been conditional only, 44 C 435
truth or falsity of reasons assigned for conditional acceptance of order, immaterial, 44 C 436
letter in answer to one containing several orders *held* to be acceptance of all, 67 C 480
time is of essence of contract where offer must be accepted within it, 76 C 629
meeting of minds necessary to make contract, 81 C 479
agreement of sole owner of corporation to sell is agreement of corporation, 82 C 220
parties to whom telegram addressed immaterial if proper parties accept terms, 83 C 65
letter and answer accepting its terms is contract, 85 C 421
contractual relations created by accepting order, 85 C 585
acceptance of bequest creates contract, 86 C 462
contract not binding on A unless he knew of it, 87 C 158

if terms only partly stated in conversation offer not indefinite if otherwise capable of precise ascertainment, 87 C 691
acceptance must meet offer made; manner and mode of acceptance may be prescribed, 87 C 691
offer is accepted when letter is mailed, 87 C 691
effect of limiting time for acceptance; if no limit, within reasonable time, 90 C 674
whether memorandum is the contract, depends on intent, 92 C 226
sealed guaranty is not offer requiring acceptance to complete contract, 92 C 646
contractor can recover for extras only if ordered, 93 C 380
continuance in employment is an acceptance of terms offered, 95 C 199
signing writing evinces intent to accept its terms, 95 C 510
prompt and persistent action may constitute acceptance, 95 C 510
effect of provision in memorandum of agreement that written contract is to be drawn and executed, as condition preliminary to valid contract, 96 C 89
whether written proposal and its purported acceptance constitute complete contract is question of law, 96 C 89
estoppel to deny assent to terms proposed from conduct such that reasonable man would believe such assent given, 97 C 6
building contract; where changes in work are made to secure engineer's approval and owner has no reason to expect claim for further compensation, no recovery for extras, 97 C 92
writing signed only by owner of land giving broker exclusive sale of land may be accepted by his efforts so as to become mutual contract, 97 C 164
unlimited right to cancel order of goods destroys contract, 97 C 703
——but if seller has any opportunity to deliver and compel acceptance for any time, however brief, this not true, 97 C 703
——as when right is to cancel at any time "before shipment," 97 C 703
where bid for transportation of school children was submitted on weekly basis and committee voted to award it on daily basis no meeting of minds, 99 C 687
——provision in contract that it might be renewed on such terms as might be agreed upon, of no legal effect, 99 C 687
contract expressly obligatory upon one party only, may raise correlative implied obligation upon the other, if so intended, 102 C 258
contract for sale *held* to be partly written, partly oral and to embrace various warranties, 102 C 529
contract, culminating in letters, may include prior oral negotiations, 102 C 529
telephone order, written acknowledgment introducing new term, reply enclosing sales slip stating terms in full; latter *held* to constitute contract, 102 C 626
——minds had not met before, 102 C 626
——acceptance by sending shipping directions and accepting performance, 102 C 626
promise defined, 103 C 624
——submission of written proposal, with acceptance without objection as constituting contract, 103 C 624
——even if recipient does not read document, 103 C 624
acceptance of promise to pay debt discharged by bankruptcy implied, if beneficial, 104 C 312
——so if acted upon, as by bringing suit, 104 C 312
right of termination given either party in lease, with provision for appraisal of personal property, to belong to lessee when paid for, and for adjustment of payments made does not destroy mutuality, 105 C 252
lessor permitted and advised lessee to sublet at great expense for alterations; *held* to constitute valid contract not to exercise option to prevent subletting, 105 C 488
receipt casually handed one who leaves automobile in garage *held* not to bind owner with limitations of liability printed on it, 109 C 365
——particularly if not called to his attention, 109 C 370
difference between price quotation and an offer intended to establish contract relations is one of intent, 109 C 371
——if intent was merely to open negotiations or call for an offer, it is not basis of contract, 109 C 371
——ordinarily offer must be complete so that unequivocal acceptance will fix rights of parties, 109 C 371
——but where intent clearly appears, selection of amount or quality of goods may be left to offeror, 109 C 371
——where telegram merely stated "best price we can quote" reply ordering certain amount was the offer, requiring acceptance, 109 C 372
where offer comes by telegraph, delivery of acceptance to telegraph company completes contract, though not delivered, 109 C 372
"early shipment" of sauerkraut *held* to mean early in fall when new kraut was put up, 109 C 372
acceptance need not be express, 110 C 234
——any words or acts indicating assent are sufficient, 110 C 234
——where defendant submitted bid for part of job to plaintiff who then submitted bid for whole job, and, hearing it was accepted, telephoned defendant of it, *held* sufficient acceptance, 110 C 234

——that getting of work by plaintiff was conditioned on acceptance of its bid nil sig., 110 C 235

——nor did provision in contract for work that no part be sublet except with consent of engineers in charge, constitute express condition or basis for implied one, 110 C 235

whether memorandum is expressive of willingness to enter into agreement or of an actual agreement then made, depends on intent gathered from language used in light of circumstances, 110 C 522

request for and rendition of services in acquiring stock of public utility companies *held* prerequisite to recovery of compensation, 110 C 571

order for goods, subject to seller's acceptance, is not a contract till accepted by notice or shipment of goods, 112 C 504

——if revoked before acceptance, no basis for judgment for goods sent and refused, 112 C 504

contract of insane person is voidable, not void, 113 C 605

——of one under conservator is void, 113 C 605

order for goods containing other stipulations is agreement where mutual promises are consideration; must be communication of acceptance, 114 C 12

where party agreed to do certain things if contract was awarded to him and contract included subject matter of agreement, it was preliminary to contract and not independent agreement, 114 C 250

acceptance need not be expressed but may be shown by words or acts indicating assent, 114 C 283

——reply to letter offering to lease premises in which modifications were suggested *held* accepted by occupation of premises, 114 C 283

order blank specified no time for delivery; confirmation saying goods would be delivered from boat due February 20th was counterproposal, 114 C 492

where order given agent was accepted by letter containing different terms, correspondence of buyer *held* to show acceptance of terms, 114 C 492

certificate providing death benefits for employee who dies after continuous service *held* promise, unless and until withdrawn, to employees who accepted and acted on it, 116 C 357

——effect of provision that certificate constituted no contract, 116 C 357

——distinction from announcement of intention to make gift, 116 C 357

where trustees did not know plaintiff intended to foreclose, where interest on note had been paid in advance, and where after assumption agreement was executed plaintiff demanded repairs or reduction of mortgage *held* finding of agreement to forbear not warranted, 116 C 480

principle of law of contracts, within which insurance largely lies, that ordinarily bare offer imposes no liability upon person to whom made until accepted, 116 C 526

——he need not reply at all, 116 C 526

——to impose duty on offeree to exercise reasonable care in dealing with it would run counter to this principle, 116 C 526

application for insurance is but an offer, which may ripen into contract by acceptance, 116 C 526

telephone conversation and letter de guaranteeing rent of derrick, *held* not to have been mere offer subject to plaintiff's approval but complete contract, 117 C 314

though parties go through the form of a contract, if both understand that neither intends to create contractual obligation, no real contract is created, 119 C 194

defendant signed agreement to furnish stone for building for $5000, work to be according to plans and specifications; latter provided no stone should be cut until drawings were submitted to architect and approved; defendant submitted drawings which were approved subject to certain changes; *held* that agreement constituted completed contract, without condition, 119 C 296

——and defendant having failed to furnish stone in accordance with drawings approved by architect was liable for resulting damages, 119 C 296

acceptance of offer though not express may sometimes be shown by words, acts or conduct indicating assent, 119 C 428

——likewise where offeree fails to reply to offer, his silence may constitute implied acceptance, 119 C 428

——but circumstances may be such that acceptance will not be presumed, 119 C 428

——as where silence or inaction has uncertain or ambiguous meaning, 119 C 428

an offer must be complete so that unequivocal acceptance will fix the rights of the parties, 119 C 428

tenant before expiration of written lease tendered new lease; landlord proposed reservation to him of right to build stairway and offered to carry tenant on year to year basis in event they did not come to agreement as to stairway; tenant said nothing but continued to occupy and pay same monthly rent; *held*

——offer of landlord was ambiguous and uncertain and there was no meeting of minds when holding over began, 119 C 428

——this conclusion strengthened by subsequent negotiations of parties for leasing other property, 119 C 428

——facts bring case within statute and holding over was from month to month, 119 C 428

employees of trolley company, by continuing employment with knowledge of new rule, impliedly accepted its terms, 119 C 622

where water board was chargeable with knowledge of promise of chief engineer to pay extra compensation and that contractor continued to work in reliance upon it, law would imply assent on board's part to the agreement, 121 C 163

where agreement was signed and given to traveling salesman to be forwarded to home office of corporation for acceptance or rejection, no contract until it was accepted, 124 C 602

formation of contract to buy whiskey by telegrams, 126 C 30

revocation of offer to be effectual must be received by offeree and before he has exercised his power of creating a contract by acceptance of offer, 126 C 30

acceptance operative if transmitted by means which offeror has authorized as soon as transmission begins and it is put out of offeree's possession, regardless of whether received by offeror, 126 C 31

where procedure in closing contract of sale by forwarding papers and draft was tacitly assented to and thereafter to be regarded as in contemplation of parties and implicit in their negotiations, reference to it in acceptance of offer would not constitute counteroffer, 126 C 36

whether defendants' execution of lease in duplicate, initialing changes in it and transmission to plaintiff were offer to lease only, or consummated complete contract, depended on intent, which was question of fact, 126 C 310

that employer could discharge employee at any time did not make contract lacking in mutuality as regards restrictive covenant, 126 C 520

no contract where agreement was contingent upon procuring a mortgage and attempts to secure it failed, 127 C 77

agreement made upon erroneous assumption that will required accumulation of income not expended, purporting to dispose of portion of this surplus income, ineffective as regards heir who was not party to it, but was binding on heir who was, 127 C 207

no contract to repair when welding company inspected leaky boiler with understanding that no repairs were to be made unless owner confirmed, 127 C 316

where defendant agreed to sell machine to S for $325 and by mistake telephoned company of similar name to call for it and latter came and offered $250 for machine which defendant accepted, *held* no such meeting of minds as to give rise to contract, 129 C 659

discussion of proposition that if A makes agreement with B thinking that B is C, contract is voidable at A's option, 129 C 661.

§ 4. Consideration

See also Bills and Notes § 3; Deeds § 4, etc.

§ 5. ——In General; Necessity

consideration rendered impossible by act of God; equity grants relief, 2 R 464

contract is void if consideration be illegal, 5 D 459

——so all offshoots of such contract, 5 D 459

——connected voyages in violation of embargo act, 5 D 458

partial failure of, may be considered in estimating damages, 3 C 488, 11 C 438, 23 C 118

indorser's promise after discharge through holder's laches is void for want of, 4 C 129

no new consideration required to support variation of contract while executory, 5 C 560

contract without consideration is nudum pactum and void, 6 C 333, 525

a writing not a specialty, requires proof of consideration, 7 C 62

need not expressly appear in writing; inferable from circumstances, 7 C 295

legislative grant is valid without a consideration, 10 C 541

what constitutes total failure of, 11 C 437

partial failure of, inadmissible to reduce damages if amount is conjectural merely, 12 C 237

fraud or want of consideration renders note void, 12 C 569

promise presumed to be made to one furnishing consideration, 14 C 451

in action on covenant, covenantor estopped from proving, 20 C 352

agreement to take part for the whole of a debt is void for want of, 20 C 561

——part payment for the whole on new consideration is good, 20 C 561, 43 C 166

promise to accept rent at later day than due is void for want of, 21 C 185

executor's promise to pay testator's debts requires a consideration, 22 C 321

total want of a substantial consideration may make deed void as to creditors, 27 C 430

executed consideration supports only promise implied by law, 29 C 6

evidence that patent contracted for proved worthless, admissible, 39 C 306

where vendee gets the specific article contracted for there can be no failure of consideration, 41 C 50
——vendee has no remedy in absence of fraud and warranty, 41 C 50
guarantors, being stockholders in company for which note is given, are not primarily liable in any mode, 45 C 538
——the consideration moving to company, not to guarantors, 45 C 538
——mere contingent liability is insufficient, 45 C 538
a sufficient legal consideration is required to support guaranty of note, 55 C 256
wife signing note as surety for husband is not estopped from showing that note is not for her benefit within statute, 56 C 151
——though the note is stated in terms within the language of the statute, 56 C 151
——such language imports no more than "value received," 56 C 151
a valid consideration is not required for transfer of mortgage, 56 C 282
essential to support an executory contract of pledge, 60 C 467
consideration necessary to support ratification of contract made by one not assuming to act as agent, 66 C 156
insolvency of building and loan association as constituting failure of consideration as to borrowing members, 69 C 6
partial failure of consideration may be material in estimating damages in an action on the contract, 71 C 171
failure of, where maker of note is at fault, is no defense to him, 73 C 144
in action for breach of contract, consideration must appear, 75 C 519
extension of time where that is of essence of contract requires consideration, 76 C 629
that property contracted for proves to be of no value, no defense to contract, 80 C 128, 92 C 600
fraudulent conveyance is without consideration, 81 C 116
seal on note does not preclude defense of want of consideration, 81 C 670
there must be valuable consideration though promise is made to charitable association, 81 C 670
note in payment for building fails when construction is abandoned with nothing due contractor, 82 C 244
real consideration of written contract shown by parol, 82 C 479
consideration presumed where one promises to indemnify another for becoming surety on bond, 83 C 686
consideration necessary for good release, 85 C 534
agreement without consideration is mere indulgence and unenforceable, 93 C 566
in accord and satisfaction consideration must proceed from the debtor and be accepted by creditor with intent to satisfy whole claim, 94 C 652
failure of consideration in whole or part is defense, 95 C 248
real consideration of written agreement, even under seal, may be shown by parol, 97 C 193
burden of proving consideration, 102 C 621, 106 C 147
rescission is itself a contract and must be supported by consideration, 102 C 627
consideration defined, 103 C 624
basis of doctrine as to necessity of consideration, 103 C 624
——mutual promises are sufficient, 103 C 631
relation of agency usually, but not necessarily, based on contract; consideration not essential, 104 C 258
accord and satisfaction must be new contract based on new consideration, 109 C 244
fact material to consideration of contract of insurance when it would substantially increase risk or affect rate of premium, 109 C 673
defective steering wheel resulting in damage to car is not a failure of consideration constituting a defense to action for price, 110 C 255
consideration of collateral agreement of vendor on sale of automobiles to turn over certain insurance for stolen parts when received is obligation of vendee in bill of sale, 111 C 544
out of making application there cannot arise implied contract on part of insurer to act upon it within reasonable time, with correlative duty to deal with it with reasonable care, either itself or through its agent, 116 C 526
——such implied promise must have consideration, 116 C 526
——in instant case no detriment to applicant contemplated by terms of offer or its acceptance, 116 C 535
——and $5 paid agent not consideration because ownership of it did not pass to company, 116 C 526
agreement to reduce in future rents fixed in lease must be supported by consideration, 118 C 86
power of equity to set aside sale for inadequacy of consideration coupled with fraudulent representations, 119 C 541
where burning of buildings on land under contract of sale has rendered vendor unable to substantially perform contract, vendee is discharged of obligation to pay, 120 C 390
claim that oral agreement for reduction of rent in written lease lacked consideration, met by fact that reduced rent was paid and accepted, 120 C 568

——a consideration would have been necessary to support it while it remained executory, 120 C 572
evidence sufficient to prove that plaintiff in making improvements on real estate acted in reliance on defendant's promise to reconvey, 124 C 507
fact that family settlements are favorites of law does not dispense with necessity for consideration, 124 C 625
promise ineffectual where no consideration for it, 126 C 48
basis of action by tenant against landlord for personal injuries based on breach of agreement to repair is negligence growing out of contract relationship, 128 C 563
——such an obligation cannot be based upon an agreement not supported by a consideration, 128 C 563

§ 6. ——Sufficiency

§ 6(1). General Principles

a subsisting legal obligation is sufficient for promise, 7 C 62
moral obligation insufficient, unless based on prior legal liability, 7 C 63, 15 C 405, 52 C 475
benefit to promisor is a sufficient consideration, 8 C 471
may be a question of law when the facts are found, 12 C 569
loss or trouble to promisee without gain to promisor is sufficient, 17 C 517
the debt is sufficient consideration for a new promise to secure it, 26 C 542
definition and foundation of a legal consideration, 32 C 303
where legal, in absence of fraud court will not inquire into its adequacy, 57 C 571
what is valuable consideration, 57 C 572
"value received" is sufficient in absence of proof to the contrary, 61 C 53
a promise to do what one is already bound to do is not sufficient, 62 C 571
express promise on past consideration not moved by previous request is not sufficient; but may be evidence as to original liability, 66 C 156
assumption of debt by novation is consideration, 75 C 633
compromise agreement is on valuable consideration, 76 C 126
valuable consideration defined, 78 C 472
discharge from legal liability that is uncertain is sufficient consideration, 82 C 601
loss or damage suffered from an act done at request of another is sufficient consideration for promise of indemnity, 84 C 437
any sum given in release of unliquidated claim sufficient, 85 C 579
debt due vendee from vendor valuable consideration, 86 C 373
if disproportionate to benefit to promisee or damage to promisor equity may refuse to enforce contract, 87 C 24
if validity of contract in restraint of trade questioned, amount of consideration of no consequence, 87 C 24
money paid through fraud is without consideration, 91 C 372
whether consideration is adequate, question of law, 92 C 641
must plead facts showing consideration inadequate to get relief, 92 C 643
agreement to accept part of debt in satisfaction of whole, of no effect as long as it is executory, 93 C 559
if no obligation imposed on one party but intent is to impose it on other, contract is sustained, 95 C 510, 588
there is consideration for oral agreement to extend time to pay note if debtor does or promises to do something further or different than he was bound to do, 100 C 429
promise to do what one is already bound by contract to do ordinarily is not sufficient consideration for agreement to pay more, 106 C 642
——but where unforeseen difficulties have arisen it may be, 106 C 642
——construction of large dam for reservoir made more costly by war conditions, 106 C 642
where there is surrender of rights under old contract there is a consideration for additional compensation, 106 C 642
——as where payment on cost basis is substituted for contract term, 106 C 642
surrender of any valuable right is consideration, 106 C 642
what is sufficient consideration for accord and satisfaction of unliquidated claim; what is unliquidated claim, 108 C 469
transfers made in satisfaction of valid preexisting debt are for a valuable consideration, 114 C 165
antecedent debt is good consideration for mortgage, at least as between the parties, 117 C 267
though there be no mutual promises if, before he calls for fulfillment of the promise, promisee performs that in consideration of his doing which the promise is made, there is consideration for the agreement and it can be enforced, 119 C 293
inadequacy of consideration for contract as ground to refuse relief in equity, 129 C 301

§ 6(2). Forbearance to Sue; Withdrawal

promise to pay another's debt on forbearance is invalid without promise to forbear, or other new consideration, 6 C 83
forbearance is sufficient consideration for guaranty, 6 C 83

mere forbearance of illegal claim is insufficient, 14 C 22
——aliter, as to compromise of doubtful claim or withdrawal of suit, 14 C 22
promise of forbearance is sufficient, for promise to pay, 22 C 322
——applicable to executor though he have no assets, 22 C 322
note given for withdrawal of nonsustainable suit may be valid, 29 C 238
——maxim that "every one presumed to know the law," inapplicable, 29 C 239
note for withdrawal of criminal prosecution, void, 29 C 242
——other sufficient considerations may render it valid, 29 C 242
withdrawal of suit and release of maker's son from arrest is a good consideration for note, 61 C 53
——not necessary that maker should have had an interest in the suit; enough that it was withdrawn at his request, 61 C 54
forbearance to enforce right; taking note for antecedent debt, 75 C 91, 95 C 199
promise to forbear what one cannot legally do, no consideration, 85 C 53
promise of husband's creditor's, not to sue, sufficient consideration for wife's note, 93 C 355
agreement to forebear exercise of legal right at request of another, is sufficient consideration, 95 C 199
one dollar and allowance of one additional day to pay debt is good consideration for guaranty, 98 C 78
——promise to forbear action as consideration, 98 C 78
note given to avoid being bothered for payment of husband's indebtedness, without consideration, 110 C 174
promise to forbear, or actual forbearance, as consideration, 110 C 174
agreement to forbear to foreclose mortgage would be sufficient consideration for an assumption agreement, 116 C 480
——but mere forbearance, without request or agreement not sufficient, 116 C 480
——though actual forbearance, combined with other circumstances may suffice to establish such an agreement, 116 C 480
to furnish consideration for compromise agreement of will contest, contest must be instituted or intended in good faith and based upon reasonable grounds that it is sustainable, 124 C 625
——so court erred in excluding evidence and overruling claims of law that there was no ground for reasonable belief by defendants that there was undue influence or bona fide intention to contest will, in suit for cancellation of agreement settling dispute over will, 124 C 625
——court erroneously adopted rule that mere forbearance of right to contest will was sufficient consideration, 124 C 626
——not necessary that there be in fact a good cause of action; sufficient if forbearing party has bona fide ground for opposing will and forbears to exercise it, 124 C 626
——and so evidence such as would be appropriate to a will contest inadmissible; plaintiff's burden of proof was to establish that proposed contest was not bona fide, by negativing existence of grounds for reasonable belief in existence of undue influence, 124 C 626
——but relevant evidence not confined to proof of conduct or declarations of defendants, 124 C 633

§ 6(3). Miscellaneous Cases

agreement to allow set-off compulsory only in equity, is sufficient, 1 R 193
delivery of execution debtor by officer to third person will support promise to pay debt, 1 R 205
guaranty that lottery ticket would draw prize, *held* sufficient, 2 R 284
promise in consideration of facilitating a divorce is void, 4 D 350
consideration of note being money retained by town collector is not illegal, 1 C 460
bond of town collector for faithful discharge of his duties is not illegal, 7 C 549
——bond is obligatory though statute requires none, 7 C 549
marriage is a sufficient and valuable consideration, 8 C 8
indulgence of prisoner for debt within prison limits is a sufficient consideration, 8 C 69
lottery ticket already having drawn blank may be a good consideration for note when both parties are ignorant of the drawing, 8 C 471
expectation of marriage is no legal consideration for note, 10 C 483
patent right valuable elsewhere is sufficient consideration for note, 12 C 569
discharge from contract not enforceable because of Statute of Frauds, insufficient, 15 C 404
promise by surety to pay debt of principal is valid consideration for conveyance to surety, 17 C 231
liability as indorser sufficient to support transfer of stock, 17 C 264, 269
bailment is valid consideration for promise to return, 24 C 488
payment of grantor's debts is a valuable consideration for deed, 27 C 430
commissions on stockholder's notes held by insurance company as guaranty fund, sufficient consideration for notes, 28 C 67
——especially as to persons insured relying on this fund, 28 C 67

release from contract supports a new promise, 28 C 471

note given by seducer after and as reparation for seduction is valid, 29 C 240

subscription conditioned on raising certain sum, sufficient, 32 C 420

——subscription to charity is binding where expenses have been fairly incurred in consequence, 32 C 421

grant of city charter is sufficient to support undertaking to perform any duty imposed, 34 C 12

——as special powers and privileges to existing corporation, 34 C 12

assignee for valuable consideration cannot recover on check held as stake on horse race, 36 C 463

note given by convicted person for fine and costs is valid when, 37 C 442

promise by married woman is binding on her separate estate, in equity, 37 C 498

——binding at law also if made after abandonment by husband, 37 C 498

mutual abandonment of contract in force is sufficient consideration for substituted contract, 37 C 576

part payment is no consideration for discharge of whole debt, 38 C 498

suit to recover premiums paid on an interest not insurable, 39 C 106

——risk and inconvenience to insurance company is sufficient consideration for premiums, 39 C 106

discharge of debt by composition with creditors is a consideration for new promise to pay original debt, 44 C 593

that money is stolen is a valid consideration for thief's promise to repay it, 46 C 435

——aliter, if it be agreed to withhold or suppress prosecution, 46 C 435

secret preference in composition agreement is of no avail as, 49 C 108

agreement to support, is a valid consideration for deed of property, 52 C 516

in this State, part payment is sufficient consideration for receipt in full, 54 C 446

an agreement of wife to reconvey to husband at his request in consideration of a conveyance to her and a provision for her support, *held* valid, 59 C 133

a debt with actual delivery of chattels to secure same, is sufficient for pledge, 60 C 467

joint and several note by husband and wife as advancement to daughter; gift of property by will to wife on agreement that she pay whatever was due, *held* sufficient, 61 C 206

note of a married woman, not on account of her separate estate or for her benefit is not for a valid consideration, 62 C 452

oral promise to leave property by will sufficient to sustain claim for services rendered, 63 C 539

——but not claim for value of property, 63 C 543

agreement to settle when adjusted certain errors in an account will support promise, 67 C 409

payment of insurance premium after dissolution of corporation is without, 81 C 592

agreement to contribute in consideration that another would discharge burden resting on contributor, good, 81 C 616

voluntary courtesy moved by previous request good consideration for express promise, 82 C 178

voluntary courtesy conferring no benefits is not good consideration for implied promise, 82 C 178

if note is given for surrender of agreement to support, need not prove amount of note reasonably necessary for support, 82 C 607

promise to pay taxes sufficient consideration for conveyance, 91 C 651

pledge of stock by corporation as security for officer's own personal pre-existing debt is without consideration, 94 C 597

that services were of no value was immaterial when right to recover was based on question of fraud, 95 C 273

contract that A would impart valuable information for a percentage of the receipts, this information being advice to sell advertising space; *held* not a valuable consideration, 95 C 702

promise to pay commission to one who has procured purchaser of property if he will disclose name and sale goes through is valid, 97 C 492

there is consideration, though buyer has unlimited option to cancel, if seller has opportunity for any time however brief to deliver goods and compel acceptance, 97 C 703

right to cancel at any time "before shipment," 97 C 703

original contract rescinded; mutual promise in new agreement a valid consideration, 98 C 575

——speedy completion of building a sufficient consideration for new or modified agreement, 98 C 575

rendition by physician of services for child injured by defendant supports obligation by latter to pay, 99 C 161

remaining as tenant consideration for landlord's promise to repair, 101 C 683

——duration of promise a question for jury, 101 C 683

promise of maker of note to apply proceeds to payment of debt due indorser is no consideration for the indorsement, 102 C 34

promise to pay for past and future services is binding if latter performed, 102 C 148

assignment of bill of lading by consignor to one from whom he bought goods on agreement that proceeds collected be applied on price is on sufficient consideration, 102 C 461

mortgage given for antecedent debt is on valuable consideration, 103 C 658

contract for purchase of coke at $6.50 per ton in place of earlier contract for purchase at $12 per ton, *held,* under circumstances, supported by consideration, 107 C 40

promise of landlord to tenant made after tenancy begun, to repair premises, is without consideration, 108 C 676

——quaere, as to promise made before and to induce tenancy, 108 C 676

sum paid as prepayment of final year's rent is part consideration of lease, 111 C 466

certificate providing death benefits for employee who dies after continuous service; *held* essentials of consideration satisfied by continuance of employee in service, 116 C 357

continued collection of rents by trustee, to afford consideration for assumption, must have been pursuant to agreement to that effect, 116 C 480

fact that one to whom gratuitous option to purchase property is given incurs expense in reliance upon it, is not consideration, 116 C 534

agreement to reduce in future rents fixed in lease must be supported by consideration, 118 C 86

——agreement of lessor to reduce rent of assignee of lease, conditioned on lessee's like reduction to assignee under another lease, followed by such reduction by lessee, *held* upon consideration, 118 C 86

——but subsequent promise to reduce rents in future was without consideration and could not be supported on doctrine of waiver, 118 C 86

continuing to furnish credit was consideration for guaranty of car dealer's agreement with finance company; applied to transaction before guaranty but subsequent to agreement, 119 C 347

agreement as to when salaries were to be drawn and contemporaneous vote of directors to pay specified amounts, as together constituting such reciprocal promises as to afford sufficient consideration, 120 C 223

good consideration for agreement to make additional compensation to contractor faced with loss due to increased costs resulting from war, where latter continues work relying thereon, 121 C 163

in determining whether transaction between trustee and cestui wherein former acquires property from latter is valid, adequacy of consideration is important and may be controlling consideration, 122 C 58

——while there was disparity in consideration in dollars and cents, where cestui secured assured income and was freed from obligation to work for company, which he greatly desired, transaction sustained, 122 C 58

antecedent debt as "new value" under Uniform Trust Receipts Act, 125 C 623

employment is sufficient consideration for restrictive covenant by employee, 126 C 520

money "he was supposed to give her later," where no promise on husband's part to give it, not valid consideration for note, 128 C 243

there being no legal obligation on part of wife to pay for services and expenditures on her property by husband, they were not valid consideration for note, 128 C 247

promise made to induce plaintiff to become a tenant or to remain one is sufficient consideration for landlord's agreement to repair; but if tenant is induced only to stay and pay rent for term already commenced, agreement is without consideration, 128 C 563

§ 7. Legality and Validity

See also Husband and Wife § 9; Infants § 2; Insanity

§ 8. ——In General; Effect

subsequent illegality does not affect claims on contract originally legal, 4 C 306

no presumption against validity of, 16 C 195

neither law nor equity will aid either on such contracts; parties will be left where they stand, 49 C 128

either party may plead or prove invalidity of contract in bar, 49 C 128

——possession acquired by or through invalid contract may avail possessor as a sufficient title, 49 C 129

rights and disabilities of parties to, in cases of executed and executory, 49 C 128

mere appointment of conservator does not affect contract previously made by ward, though contract was made while application for conservator was pending, 51 C 79

confidential relation between parties to contract affects it how, 53 C 314

——will not be sustained in equity unless fair in itself and nature and effect fully understood, 53 C 316

——and burden is on party claiming benefit, 53 C 319

susceptible of two constructions, one legal, the other illegal, the former should be adopted, 54 C 424

validity of contract *held* not affected by law passed after its execution, 68 C 46

status established by law cannot be varied by contract, 68 C 539

equity will not give relief where illegal contract is partly performed, 73 C 513

illegal contracts not enforced in law or equity if parties in pari delicto, 85 C 283

provisions for payment of illegal bonuses not separable; cannot recover sums paid if unseparable, 86 C 282

money paid in pursuance of fraudulent scheme cannot be recovered back, 91 C 371

——if scheme is repudiated before others' rights affected, may be, 91 C 371

void contract cannot give rise to valid lien, 93 C 130, 136

where contract is illegal and void, neither party can recover consideration if in pari delicto, 93 C 690

ordinarily neither party can recover on illegal contract; in pari delicto, 100 C 541

——unless remedy given by statute as in case of gaming, 100 C 541

one retaining benefits in no position to attack legality, 101 C 713

if consideration illegal, or contemplated performance unlawful, contract is void and unenforceable; e.g., rental of premises for sale of liquor, 102 C 346

mere knowledge of illegal purpose for which goods are bought not always in itself sufficient to void contract, 102 C 350

illegality of contract must be specially pleaded, unless apparent on face of contract and all circumstances are before the court, 103 C 380

stipulation that contract is to be interpreted and enforced according to laws of certain State is valid and operative if made in good faith, 103 C 553

fraud cannot be contracted against, 105 C 572

contract between husband and wife as to property rights made to comply with statutory provision could not be given effect as binding upon them in equity, 108 C 722

when person is non compos mentis and not under guardianship his contracts are voidable not void, 113 C 594

effect of adjudication of incompetency is to render person conclusively incapable of making valid contract while conservatorship continues, 113 C 594

——contracts void not merely voidable, 113 C 594

courts will not in any way assist carrying out of contract, the inherent purpose of which is to violate the law, 115 C 418

——action does not lie if it is necessary to prove illegal contract to enforce it, 115 C 418

——courts will not enforce any alleged right directly springing from contract but leaves parties in pari delicto, 115 C 418

——but where partnership is formed to prosecute lawful business, illegal conduct by managing partner incidentally arising will not deprive other of relief, 115 C 418

——rules apply in case where husband agreed to deposit funds of wife in their joint names and after engaging in legal liquor business carried on illegal business, 115 C 418

legal part of contract not severable from illegal so that former could be enforced, 124 C 104

courts will not grant relief if proof of illegal contract is necessary to support action or purpose of contract to violate law, 126 C 503, 128 C 436

——while illegal practices in violation of liquor law might subject plaintiff to penalty they were no defense to suit for goods sold and delivered, 126 C 503

§ 9. ——Contracts against Public Policy

promise to pay public officer for doing his duty is void, 20 C 6

note given in whole or in part to suppress inquiry into offense is void, 21 C 432

——aliter, if freely given to satisfy private damages, 21 C 432

note given as condition of obtaining legislative divorce *held* not void, 22 C 632

——Legislature may divorce on such terms as it sees fit, 22 C 633

attorney instigating riot and promising to defend; no recovery by attorney, 28 C 337

mortgage given by third person to prevent criminal prosecution is not enforceable, 47 C 221

——not necessary that offense compounded be a felony, 47 C 223

whether rule of railroad that compensation of employee covers all risks is valid, quaere, 52 C 285

bond to save town harmless if it would not institute "legal proceedings" against obligor for bastardy, 54 C 419

——*held,* the "proceedings" referred to were and must be civil and not criminal, 54 C 424

——and contract *held* not void as against public policy, 54 C 419

mere fact that contract grows out of transaction on Sunday will not render it void, 58 C 395

construction and traffic contracts by directors for personal secret gain *held* illegal, 60 C 572

contract to bear expense of suit on life insurance policy and to receive half the amount recovered is not opposed to, 61 C 258

contract against public policy is void, 64 C 276, 86 C 641, 92 C 621

contract of railroad relieving itself from liability for injury to passenger is against public policy, 66 C 512, 82 C 353

contract in restraint of marriage, 73 C 74, 88 C 390

agreement by attorney to bear expense of suit and receive one-half of the proceeds is invalid, 77 C 457

contract to cheat and defraud unenforceable, 83 C 430, 85 C 282

contracts for contingent fees not encouraged, 84 C 594

public policy opposed to contracts to pay bonuses in nature of bribes, 85 C 282

what agreements are contrary to public policy, 86 C 641

agreement only to employ union help is against public policy, 86 C 641

contract to facilitate divorce against public policy; agreement respecting alimony upheld, 87 C 377

contract valid where made is enforced here if not against domestic policy, 87 C 377

officer's receipt is valid contract, not prohibited by statute or opposed to public policy, 92 C 140

labor unions and their activities are not against public policy, but must do no harm; must not limit employer's right to use nonunion labor, 92 C 161

where facts are unquestioned, public policy is question of law, 92 C 621

whether against public policy determined by its tendency, not by the evidence, 92 C 621

contract to do what is dangerous to public health not enforced, 92 C 621

promise not to make will no more against public policy than is one to make will, 96 C 383

contract against effect of fraud is contrary to public policy, 100 C 491

——provision that all representations not in written contract were abrogated does not bar action for fraud, 100 C 491

contract by corporation to buy its stock from one of its stockholders at price he paid for it if corporation is not successful as against public policy, 101 C 539

whether provision that validity and construction of contract of conditional sale should be determined by the law of the State where it was made would be against public policy, quaere, 104 C 567

agreement not to extradite fugitive from justice void as against public policy, 105 C 375

agreement that conveyance of real estate shall be rescinded unless grantee can secure judgment releasing restrictions is not opposed to public policy, and grantee may maintain action, 106 C 66

provision in lease forbidding tenant to make alterations in building without consent void as against public policy if effect would be to prevent him remedying conditions dangerous to travelers, 113 C 593

conveyance from husband to wife made not to facilitate divorce but solely as amicable settlement of property affairs made in view of divorce proceedings already begun or decided upon, not necessarily contrary to public policy unless concealed from court, 119 C 612

contract between employees' committee and trolley company not unfair or illegal as to plaintiff employees, 119 C 622 and see Street Railways

separation agreement made in New York not invalid here, 121 C 281

in this State a conveyance from husband to wife when made not to facilitate divorce but as amicable settlement made in view of independent divorce proceedings already instituted, not contrary to public policy and void unless concealed from court, 121 C 281

made by husband and wife after separation, in view of divorce proceedings independently instituted, 123 C 564

considerations affecting validity of restrictive contracts on grounds of public policy; injury to public by being deprived of party's industry; injury to party by being precluded from occupation, 125 C 1

contract between husband and wife in settlement of property affairs in view of divorce proceedings, not necessarily contrary to public policy and void, unless concealed from court, 127 C 514

conditional sale contract which is part of general scheme to defraud creditors is unlawful and against public policy, 128 C 200

common-law doctrines of champerty and maintenance as applied to civil actions never adopted here; only test is whether transaction is against public policy, 129 C 362

agreement that T would finance purchase of mortgage by plaintiff and suit to foreclose it and afterwards would buy property, against public policy and, as between parties, unenforceable, 129 C 362

——right plaintiff is seeking to enforce in foreclosure action originated in illegal agreement, and it would be improper to enforce it in this action, 129 C 362

ordinarily agreement against public policy in nature of maintenance and champerty of no avail to defendant, 129 C 362

——right, to enforce which action is brought, does not originate in illegal agreement, nor is proof of that agreement necessary to its establishment, 129 C 362

§ 10. ——Contracts in Restraint of Trade

contract in restraint of trade if limited as to place need not be as to time, 47 C 178

——that covenantee afterwards goes out of business is of no effect, 47 C 178

sale of good will; vendor may continue same business in same locality, 54 C 138

——limit of his rights de advertising and soliciting new business, 54 C 138

contract in restraint of trade cannot rest upon mere inference, 54 C 139

vendor of good will of business has right to carry on same business, 54 C 139

——court will not restrain vendor unless his agreement restrains him, 54 C 139

reasonableness of contracts in restraint of trade in contract of sale, 87 C 23, 94 C 248

renewal of contract in restraint of trade as renewal of restriction, 87 C 23

test of validity of contracts in restraint of trade; consideration of no significance, 87 C 23

contract not to practice medicine within limits of New Britain, good, 87 C 23, 92 C 641

contract to limit employment after discharge, good if reasonable, 87 C 24

contract not to engage in business can contain provision for liquidated damages, 89 C 111

agreement in restraint of trade reasonable in time and place, good, 92 C 641

contract not to engage in trade in town for three years, good, 92 C 641

reasonableness of contract in restraint of trade determined in light of public policy of present time, 94 C 248

vendor can restrain himself from continuing business where employee cannot, 94 C 248

reasonableness of employee's restrictions determined by effect of employer's business and curtailment of employee's right with due regard to public interest, 94 C 248

restriction not to engage for five years in like business in any city where employer had store unreasonable, 94 C 248

co-operative contract for manufacture of copper bands for projectiles *held* not to be for purpose of restraining competition between the parties, 94 C 312

claim that covenant not to engage in business is unreasonable requires inquiry into all surrounding circumstances, 101 C 713

——must be raised on pleadings, not by objection to evidence, 101 C 713

rule for determining when restrictive covenant between employer and employee is valid, 119 C 289

——agreement by employee that if he left employment he would not solicit employer's customers in same locality for year *held* enforceable, 119 C 289

restrictive covenant not to enter into sawdust business *held* reasonably necessary for protection of employer's business, 122 C 560

covenant restricting activities of employee during or after termination of present employment must be restricted in its operation as to time or place, on good consideration, and must be reasonable, 125 C 1

considerations affecting validity of restrictive contracts on grounds of public policy; injury to public by being deprived of party's industry; injury to party by being precluded from occupation, 125 C 1

employment involving confidential knowledge particularly appropriate to restrictions, 125 C 1

——restraint may reasonably cover actual clients or customers of employer whose business with them would be injured by activities contracted against, 125 C 1

contract by industrial engineering concern whose business involved trade secrets, etc., with employee that latter would not enter employ of any client within two years after termination of contract, sustained, 125 C 1

essentials for validity of covenant restricting activities of employee after terminaion of employment, 126 C 515

——agreement not to solicit business from employer's milk customers for two years after termination of employment or engage in same business in certain specified towns, enforceable in towns where defendant had special knowledge of customers, 126 C 515

——right of employer not dependent on fact that employee has been entrusted with trade secrets, etc., 126 C 520

§ 11. ——Contracts in Violation of Statute

contract in violation of existing law is not enforceable in a court of justice, 13 C 258

——intent of usury statute is not to make contract wholly void, 13 C 258

for sale of sewing machines by lottery is prohibited by statute, 49 C 127

——though statute only inflicts penalty on offender, 49 C 128

——neither law nor equity will aid either on such contracts; parties will be left where they stand, 49 C 128

when contract is against prohibition of statute it is invalid, 78 C 245, 89 C 293

on action for breach of promise by lessee to maintain bakery on leased premises, no defense that they did not comply with law, 80 C 192

contract to secure property in evasion of the Statute against Perpetuities invalid, 80 C 372

contract to evade Usury Act prohibited; all facts to show intent admissible, 91 C 601

officer's receipt is valid contract, not prohibited by statute or opposed to public policy, 92 C 140

when penal statute prevents civil action arising out of forbidden transaction, 103 C 21

——no recovery allowable to repairman making automobile repairs in excess of $50 without written authority required by penal statute, 103 C 21

where statute forbade individual to open highway until selectmen had approved grade, location, etc., agreement that improvements would be made in future as condition of present approval is void as not within design of statute, 106 C 34

——estoppel could not give it effect, 106 C 34

——bond given to assure performance also void, 106 C 34

statutory obligation of owner to pay tax cannot be avoided by contract between owner and lessee by which latter assumes it, 107 C 703

contract made for or about anything made unlawful by statute is void, 109 C 110, 115 C 107

——thus note for unlawful rate of interest under Small Loans Act, though not specifically made void, 109 C 110, 115 C 107

fixing larger price for credit sale than cash sale is not usury, 110 C 255

——but sale cannot be made cloak for usurious loan, 110 C 255

lease for liquor business not made illegal by prohibition law where it permitted lawful use and was so used after prohibition, 110 C 680

child under sixteen employed in violation of statute; contract not void as to child's rights, 111 C 229

a contract upon which Legislature says no action can be maintained cannot defeat a legal claim, 114 C 539

prior to enactment of statutes, sale of all assets of corporation not insolvent or in failing circumstances was ultra vires and could be prevented by nonassenting stockholders, 116 C 628

——purpose of statute authorizing corporations, except certain ones including banks, to sell all assets on vote of two-thirds of stock was to change this rule, 116 C 628

——common-law rule did not apply to corporation which was insolvent or in failing circumstances, closing up its affairs, 116 C 628

——sale by such corporation, though a bank, not impliedly forbidden by the statute, 116 C 617

no recovery can be had by either party to a contract having for its object the violation of law, 124 C 96

——when undertaking contracted for is itself forbidden by a statute making clear Legislature's intent to prohibit, rule squarely applies, 124 C 96

——so where testator's wife, beneficiary, agreed with relatives to destroy second will and probate first one and to bequeath relatives a sum of money, contract violative of statutes and public policy and invalid, 124 C 96

§ 12. ——Gambling or Wagering Contracts

note growing out of illegal sale of lottery ticket is valid, when, 4 C 445

gaming contracts on stocks, as distinguished from speculating contracts, are void, 48 C 127

mere wagering contract with insurance company on another's life is invalid, 69 C 511, 70 C 648

as to speculative stock transaction, where there is an option to demand delivery, 77 C 508, 518

when contract to purchase stock on margin not illegal, 84 C 694

when contract to purchase stock is to pay only difference in market price and make no delivery of stock, illegal, 84 C 694

whether contract for future delivery is valid or a wagering contract depends upon intention, 115 C 226

——if actual sale and delivery intended at time of contract, it is valid though commodity never delivered and settlement made on basis of difference in price, 115 C 226

——whether contract is a wagering one, usually question of fact, 115 C 226

verdict of jury that defendant's transactions in sugar futures were valid and not wagering contracts properly sustained, 115 C 226

§ 13. ——Miscellaneous

contract based on trading with public enemies is void, 1 C 577

claim on contract by neutral arising from contraband goods *held* legal, 4 C 306

contracts by infants against their interest are absolutely void, 4 C 379

——contract of surety on note, 4 C 379

note based upon extortion of officer is void, 4 C 472

of no force when promisor as a public servant had no power to contract, 6 C 332

between husband wife, if of no value or benefit to wife, are not enforceable against her, 7 C 227

to convey shares of stock of children and wife, and conveyance of children's only, 9 C 415

——*held* such conveyance was illegal as to children's stock and contract failed for want of consideration, 9 C 415

——subsequent attachment of wife's stock *held* not a breach of good faith, 9 C 417

promise to indemnify for future act proving to be trespass, not originally supposed such, is not illegal, 16 C 553

peculiar local interest in improvements warrants promise of indemnity to city, 20 C 7

in suit on bond of agent of insurance company for faithful performance, agent estopped from denying legality of business done, 26 C 47

agreement to pay more than legal fees, is generally not enforceable, 26 C 465

——but if paid, cannot be recovered back, 26 C 465

——what further consideration will support such promise, 26 C 466

friend and apparent advisor of vendee ought not to receive commission from vendor, 41 C 583

——contract for commission for effecting sale is void, 41 C 583

courts will uphold contract of State even though a monopoly is thereby created, 55 C 16

sale of securities by executor to legatee is voidable by latter, when, 56 C 12

——sufficient if legatee repudiates within a reasonable time after discovering the fraud, 56 C 17

contract of promoter of corporation whereby he secures secret profit invalid, 64 C 102

contract of one who is going into business with the holder of a liquor license to indemnify surety on license bond is good, 64 C 264

contract between father and mother of bastard that mother will not institute bastardy proceedings and father will transfer property to her, valid, 68 C 39

agreement by father, on formation of corporation, to bequeath stock to son upheld, 68 C 91

promise to marry woman known to be married is void, 69 C 651

contract of incorporators of public service corporation to transfer franchise is invalid, 73 C 517

contract to "rebuild" building constructed contrary to law is invalid, 74 C 209

"pooling" of contractors in bidding on contract; point not raised, 76 C 9

promise, in consideration of marriage, as to payment of money after decease, 80 C 313

contract to sell what one needs in his business for stated time seems valid, 81 C 480

promise to appropriate future legacy not enforceable obligation or present appropriation, 81 C 670

contract of railroad relieving itself from liability for injury to employee is void, 82 C 353

contract to pay for services by will valid, 82 C 648

contract by minor for legal services voidable, 84 C 594

whether infant's contract for legal services to be treated as one for necessaries, quaere, 84 C 610

contract to pay bonuses intended as bribes, illegal, 85 C 282

fraud vitiates all kinds of contracts, 86 C 101

no presumption of undue influence in relation of father and son, 88 C 214

contract between husband and wife is enforceable, 88 C 536

what is essential in provisions for liquidated damages, 89 C 51, 110, 90 C 1

contract of mutual distribution *held* to be valid, 89 C 420

agreement cannot give effect to invalid mechanic's lien, 89 C 526

can fix time when liability under contract expires, 90 C 226

partners may limit liability among themselves by contract, 91 C 54

validity of contract rights of members of labor union, 92 C 161

agreement to pay bonus does not imply it is illegal as matter of law, 93 C 146

contract to give a continuing option unlimited as to time is void, 93 C 520

——a continuing right of preëmption is void, 93 C 520

sale of liquor license with agreement that vendee is to carry on business in own name, void, 93 C 690

contract between corporation and director is not void, but voidable unless made in good faith, fair, and fully understood, 94 C 384

there may be valid oral contract to make written contract, 96 C 99

provision to leave determination of price, value, etc., to third person is valid, 98 C 616

quaere whether street railway could make perpetual agreement with town to be responsible only for fixed portion of paving of street, as interfering with power of General Assembly to legislate on the matter, 101 C 141

contract by corporation to purchase its own stock illegal; acceptance of benefits will not estop it to raise this defense, 103 C 380

——but money loaned on such a contract may be recovered back, 103 C 380

relation between administrator and heirs one of trust; but contract between them only voidable if unfair, 104 C 271

agreement whereby administrator made personal loans to heirs and held their distributive shares as security *held* valid, 104 C 271

when consideration for note is sale of illegal saloon business, it is void; but not if place is merely "reputed to be" used illegally, 104 C 703

provision in fire insurance policy that all questions arising under it should be submitted to courts of country where property was, *held* illegal, 107 C 546

agreement whereby cash received for capital stock subscribed for by other would be credited to balance due from certain subscriber, *held* fraud on creditors and not binding on receiver who represents them, 117 C 445

——creditors entitled to rely on subscription as part of capital assets, 117 C 445

contract made to protect party against demand of his wife on understanding that unless she attempted to reach property it should not take place of earlier agreement which was terminable at will, sustained, 122 C 60

——situation not within principle that party will not be permitted to set aside conveyance made for purpose of defrauding creditors, 122 C 60

contract entered into through fraud, 122 C 559

conservator has implied powers to make contracts so far as they are involved in exercise of powers expressly granted him, 127 C 207

when contract between attorney and client as to amount of fee is void, 127 C 387

§ 14. ——Ratification

See also Agency § 7

ratification of, by infant after majority; law de stated and applied, 49 C 495

an offer of compromise by infant after reaching majority *held* not an acknowledgment of his liability, 52 C 4

illegal contract of city for exclusive use of streets may be ratified and confirmed by Legislature, 55 C 13

——although ratification is by a charter to assignee of original contractor with city, 55 C 12

——the State is concluded from impairing such contract, 55 C 15

ultra vires *held* no defense to suit for balance of agreed price, when defendant received benefits of contract, 58 C 221

a corporation may ratify when fully organized, a contract previously made by promoters, if reasonable and within corporate purposes, 59 C 285

——such ratification makes contract as though requisite power existed when it was entered into, 59 C 285

nature and effect of ratification, 64 C 495, 544, 70 C 17

power of trustee in insolvency to ratify insolvent's contracts, 64 C 495

no consideration necessary to support ratification of contract of one assuming to act as agent; otherwise consideration is necessary, 66 C 156

acceptance of part of money from conveyance by life tenant as ratification of it by remainderman, 66 C 184

de jure municipal board may ratify contract of de facto board, 68 C 495

bringing action on contract as ratification, 70 C 18

failure to demand goods in hand of bona fide purchaser from wrongdoer *held* no ratification of sale, 74 C 18

ratification of purchase of goods by silence on receipt of bill, 75 C 631

corporation can ratify contract made before filing certificate of incorporation, 88 C 233

ratification of fraudulent contract by proof of claim in bankruptcy, 91 C 482

ratification of contract for services performed in organizing corporation, 92 C 266

contract made by official of trust company subject to approval of trustees will be deemed approved or approval may be inferred from circumstances, 97 C 252

contract between directors and corporation; ratification by or estoppel of stockholders to object, 104 C 683

——if disavowed, right of directors to retain reasonable compensation for services performed, 104 C 691

provision that agreement should be conclusive of rights of parties under will "or otherwise," not effective as ratification to give validity to prior contract not joined in by one of the parties, 127 C 223

§ 15. Construction

See also § 47 infra

§ 16. ——General Rules

contracts construed most strongly against promisor, 2 C 409, 13 C 490

——applies mainly to cases of patent ambiguity, 34 C 496

regard to be paid to spirit and object of the contract as well as to the words used, 4 C 590

"or" construed "and," when, 13 C 116

of two constructions, that sustaining contract to prevail, 16 C 195, 54 C 424

where no imperfection or ambiguity in language of contract, evidence of usages will not be received to vary terms expressed, 21 C 19

grants for public benefit are to be liberally construed, 21 C 306

——while those for private purposes, involving incidental public benefit, strictly, 21 C 306

rule contra proferentem, of little value and the last to be used, 34 C 496

——to be applied by jury only in nicely balanced cases, 34 C 497

"noscitur a sociis" has especial force and significance when, 40 C 585
terms cannot be added to contract by interpretation, 67 C 59
contemporaneous usage of great weight, 72 C 480
where letters refer to conversation, construction will not be based on them alone, 73 C 118
to be construed to give effect to all provisions, 74 C 213, 89 C 571
punctuation may be disregarded, 74 C 214
contract to be construed with reference to statutes in force, 75 C 71
——so with reference to custom, 82 C 116, 92 C 420
usage determines meaning of technical terms, 77 C 104
to be construed to make contract valid, 77 C 507
construction contra proferentem, 78 C 189, 79 C 247
to be construed in light of its object, 79 C 249
general words after particular enumeration may include things not ejusdem generis, 80 C 209
letters may be admissible to show attitude of parties, though not to vary written contract, 81 C 111
when antecedent oral agreement is admissible, 82 C 427
oral evidence inadmissible to explain or control unambiguous terms, 82 C 475
terms of partly written and partly oral contract left to jury, 83 C 167
contract construed according to constitution and by-laws of a society, 84 C 96
no by-law can divest vested rights 84 C 97
provisions of original contract retained in one continuing it, 87 C 23
contract contained in order and letter supplemented by conversation, 87 C 691
no presumption in opposition to express provisions, 88 C 634
contract partly written and partly printed construed as whole, 89 C 571
clauses of contract should be reconciled; effect given to all parts, 89 C 571
general words and phrases are restricted by subject matter, 89 C 583
where two interpretations, give fair and reasonable one, 90 C 226
oral agreement as to how contract is to be carried into effect, good, 90 C 317
oral evidence to explain terms, admitted, 90 C 317
ordinary business currency presumed to be intended, 90 C 496
acquiescence in construction of ambiguous contract is of weight, 93 C 671
if each party insists on his own interpretation of ambiguous terms, self-serving declarations do not show acquiescence, 93 C 671
relative knowledge of trade usages of no account if goods sold by trade description, 93 C 682
——also whether parties knew or ought to have known they were used as such description, 93 C 682
subsequent misfortunes of contracting parties do not control construction of the contract, 94 C 46
effect of precedents, 95 C 101
where there is special agreement on point, local custom is of no effect, 95 C 273
surrounding circumstances, placing court in position of parties, properly proven, 97 C 653
provisions limiting right to go to court on breach of contract to be strictly construed, 98 C 623
contracts are to be construed in the light of principles of law stated in decided cases, 98 C 623
written contract purporting to state whole agreement treated as final and complete, 99 C 393
——construction and legal effect not alterable because of its inconvenience or unreasonableness, 99 C 393
——implied agreement cannot arise from such a contract, 99 C 393
court will not change or add to a definite provision, 100 C 593
imminence of effect against public policy if certain construction adopted to be considered, 101 C 141
presumption that words are used in same sense where occurring more than once, 102 C 304
contract affecting public interest to be construed to protect that interest, 106 C 563
provision inserted for benefit of one party, to be construed most strongly against him, 106 C 563
word used more than once presumed to have same meaning each time, 107 C 404
that construction which is more fair, reasonable, and rational is to be preferred, 107 C 724
custom immaterial where construction of contract is plain, 108 C 126
parties must be assumed to contract with reference to the rules of law applicable to their agreement, 108 C 498
no presumption that contract was made with reference to custom of particular trade unless parties knew or should have known of it, 108 C 521
provisions of doubtful meaning, in an insurance policy, to be construed favorably to insured, 108 C 707

every provision in contract given effect where reasonable, 109 C 257
——particularly in indemnity bond for premium, 109 C 257
another contract connected by reference and subject matter may properly be considered, 110 C 459
obscure and ambiguous contract to be construed to make it fair and reasonable, 110 C 571
where statute requires instrument, parties are deemed to have had law in contemplation when it was executed, 113 C 6
particular language prevails over general, 113 C 514
circumstances to be considered in construing contract are limited to those known to parties when it was made, 116 C 167
contract must be examined as a whole to determine transaction to which it is a memorial, 116 C 625
is to be construed according to what is fairly to be assumed to be understanding of parties, 117 C 318
——situation and circumstances to be considered and language to be interpreted with help of that evidence, 117 C 318
when policy is so framed as to leave room for two constructions, words used should be interpreted most strongly against insurer, 119 C 426
contract to be construed as a whole, all relevant provisions considered together and in light of situation of parties and circumstances existing when it was executed, 120 C 327, 121 C 296
when words in contract have technical meaning, parol evidence by expert admissible to show what that meaning is, 121 C 492
——as where term "stone masonry furnished but not cut" was used, 121 C 492
trust instrument prepared by mortgage trustee for bondholders, which is drawn by it, is to be construed most strongly against it, 123 C 591
where meaning of word is doubtful, resort may be had to extrinsic evidence, 124 C 659
statutes existing when contract was made become part of it and must be read into it, 127 C 293
where contract drawn so as to leave room for two constructions, words used will be interpreted against party who drew it, 127 C 293
where particular recitals precede general words a release will be restricted to matters particularly recited, 128 C 577
——but this technical rule is subordinate to broad rule that intention of parties which words of instrument express, in light of circumstances existing at time, shall prevail, 128 C 577

§ 17. ——Intent

contracts should be construed to effectuate the intention, 9 C 8
general intent and object to be followed rather than grammatical construction, 10 C 557
intent and spirit of contract to be gathered from words used, 12 C 188, 26 C 177
intent to be regarded and given effect, 16 C 195, 287
courts always intend to effect the intention of the parties, 49 C 203
——if contract is valid the intent is the inflexible and imperative law of the case, 49 C 203
——intention as an independent fact can only be shown where the language is applicable to more than one object, 52 C 213
intent of parties to contract to be carried into effect by court if no legal barrier prevents, 49 C 504
——equity will supply and erase words and correct expressions, accordingly, 49 C 504
ordinarily the meaning of a writing is to be gathered from the language used, 54 C 62
——if language is unambiguous the court cannot limit its effect, 54 C 62
secret intention of parties cannot vary or change meaning of the plain language used, 54 C 62
to discover and give effect to intention of parties is the fundamental canon of interpretation of contracts, 54 C 333
context may show intent of parties different from technical meaning; "heir-at-law," 64 C 240
presumed that words used with established meaning, 64 C 248, 85 C 295
secret intent of parties cannot affect, 70 C 1, 85 C 289
intent is determined in view of words, subject matter, context and surrounding circumstances, 71 C 120, 80 C 206, 82 C 280, 84 C 177, 199, 426, 86 C 1, 88 C 637, 95 C 215
——as these existed at time of execution, 64 C 247, 95 C 100, 215
intent of parties governs though against letter of the contract, 74 C 217, 67 C 59, 82 C 567
words are taken conclusively to express intent of parties, 82 C 478
object of interpreting written instrument is to carry out intent of the parties, 82 C 567
where intention of parties is an inference from the writing, it is reviewable, 84 C 178
only intent expressed in writing is material, 84 C 192
how to prove ambiguous language in contract; cannot say what one "intended" language to mean, 85 C 283
intention is found in written agreement; not varied by parol if clear, 88 C 656, 94 C 491
intention found from language used governs in sealed and unsealed writings, 89 C 74

conversation at time contract made admitted to show intent of parties, 92 C 278

intended meaning must control if language is susceptible of such construction, 93 C 29

unexpressed intent is of no significance, 94 C 491

cannot give language of contract impossible meaning to effect conceived intent, 94 C 491

language must be reasonably appropriate and sufficient to express intent, 94 C 494

question is what was intent of the parties as communicated by words in the sense in which they ought to be fairly understood in light of circumstances, 95 C 100

parties should not be held to have intended unreasonable or inequitable consequences, 101 C 594

intent to be determined by fair and reasonable construction in light of circumstances, 102 C 180

in determining intent, contract to be read as a whole and in the light of the situation of the parties and their practical construction, 103 C 624

intent controls in construction of contract and each clause is to be read with the others, 103 C 624

prior negotiations may indicate intent of parties in using certain language, 104 C 439

plain meaning of words prevails, regardless of secret intention, 106 C 412

ambiguity to be resolved by considering the language, intent and purpose of the parties, 107 C 724

parties using commonly accepted terms in negotiations *held* to have intended usual form of contract described thereby, 108 C 349

only expressed intent can be regarded, 110 C 524

intent expressed in agreement controlling, not intent parties may have had, (dis) 111 C 83

intent as disclosed by writing read in light of surrounding circumstances controls, 112 C 615

court may give effect to real intent of parties by correcting error apparent on face of instrument, 114 C 100

——as where attachment bond contained agreement to pay value of plaintiff's interest in property instead of defendant's, 114 C 100

legal effect of instrument cannot be altered by proof of what parties understood legal effect to be, 114 C 539

technical term used in language of ancient leases or in formal clause where common usage has given it particular significance and nothing suggests contrary intent to be given that meaning, 114 C 553

——otherwise construction is determined by intent of parties, 114 C 553

——which, unless there is room for questions, is to be sought in light of all circumstances, 114 C 553

technical language often employed in its modern and popular sense rather than with significance acquired in the past or given it when deliberately used in that sense, 114 C 553

in determining effect of deed, as of written contract, inquiry is not what parties intended, but what is intent which is expressed in it, 116 C 440

——if description is clear and unambiguous, that description must be given effect, 116 C 440

intention of parties is controlling and is governed by their situation and language used, 118 C 663

——language must be given its ordinary meaning unless a technical or special meaning is clearly intended, 118 C 663

——contract must be construed as a whole and so as to give effect to each part if possible, 118 C 663

it is not the intent the parties may have had but the intent they have expressed in their agreement that is controlling, 119 C 295

the aim of interpretation is to ascertain what was intended by what is said, not to give effect to what it might be thought parties intended or might have said but did not, 119 C 629

insurance policy is contract and intention of parties as manifested is determinative of risk it covers, 120 C 296

intention determined from language used interpreted in light of situation and circumstances, 121 C 408

——question is not what intention existed in minds but what intention was expressed, 121 C 408

——promise not expressly made will not be read into contract unless it arises by necessary implication, 121 C 408

technical rule is subordinate to broad rule that intention of parties which words of instrument express, in light of circumstances existing at time, shall prevail, 128 C 577

§ 18. ——Construction by Parties

practical construction of parties of great weight, 68 C 323, 72 C 147, 74 C 217, 82 C 280, 84 C 178, 85 C 289

a written agreement to divide funds must be construed according to the meaning attributed to it by all the parties, 83 C 242

can show subsequent agreement on construction of terms, 90 C 321

practical construction of parties, 97 C 653

——thus, as bearing on meaning of contract of employment, position actually offered and accepted properly considered, 97 C 653

practical construction of parties of great significance, 101 C 594, 102 C 258, 106 C 563
——affords strong presumptive evidence of intention, 101 C 601
where parties are not acting upon a construction of contract or upon a distinct recollection of it, acts do not give rise to practical construction, 102 C 306
few violations of a rule of trolley company concerning employees' seniority rights not such consistent practice as amounted to practical construction by parties, 119 C 622
it is only where words of writing are ambiguous or of doubtful import when read in connection with entire instrument that resort can be had to evidence of acts of parties thereunder as aid in arriving at meaning by practical construction of parties, 119 C 622
correspondence between parties' attorneys after an agreement has been made as to manner of performance, proper to consider in determining effect of contract, 121 C 297

§ 19. ——Construing Two Instruments Together

two instruments executed at the same time, between same parties, de same subject-matter, and to effectuate one object, are to be construed as parts of one agreement, 9 C 378
two or more deeds executed on the same day are to be treated as separate transactions, when, 10 C 292, 435
two instruments, part of same transaction, should be construed together, 72 C 146, 74 C 329, 82 C 481
two writings may be connected by oral evidence; construed together, 82 C 479
two contracts, part of same transaction, to be construed together, 127 C 179

§ 20. ——Implied Terms

covenants implied from condition in indenture of apprenticeship, 4 D 320
where contract does not name promisee, it is presumed to be him from whom consideration flows, 71 C 248
promise to indorse implies unrestricted indorsement, 71 C 418
reasonable time for performance implied where none is stated, 73 C 484, 660, 75 C 300, 77 C 15, 78 C 137, 82 C 428, 87 C 50, 92 C 563, 93 C 385, 95 C 400, 97 C 17, 168, 98 C 316, 108 C 683, 111 C 342, 113 C 397, 759
where creditor takes writing from B assuming A's debts, extension of credit is implied, 87 C 50
custom of trade as to payments part of contract of sale, 93 C 211
contract for repairs covers responsibility for entire job, 94 C 520
mutual agreement showed tacit understanding to make monthly payment though no express promise to do so, 95 C 588
agreement to install work on specified day imports obligation of owner to keep work on building going forward so as to make instalment possible, 97 C 657
a necessary implication is one quite as obvious from terms of contract as if expressed, 98 C 623
nothing will be implied in case of complete written agreement except what arises by necessary implication, 99 C 388
implied provision in every construction contract that owner will do nothing to prevent or impede performance, 100 C 148
where contract provides for certain contingency court cannot import some other provision into it, 100 C 581
——thus where delivery of goods was to be made when an embargo was lifted, failure to deliver before not violation of any term of contract law will imply, though embargo continued much longer than anticipated, 100 C 581
contract always includes terms fairly to be implied, 102 C 255
where party assumed express obligation law raises implication of duty by other party to give him reasonable opportunity to perform, 102 C 258
whatever may be fairly implied from language of instrument in judgment of law is included in it, 102 C 258
implied obligation of a physician to use proper skill and care, 103 C 717
where no method agreed upon, presumption is that payment is to be made in cash, 108 C 683
forfeitures by implication or construction not compelled by express requirements generally disfavored, 108 C 707
liability of garage owner, as bailee, to store and safely keep automobile left to be washed, 109 C 365
in conditional sale contract intent that title remain in vendor implied, though not expressed, from other provisions, 112 C 615
where debtor gives note for debt payable at future time, an agreement is implied to forbear to sue on the original debt during term of note, 114 C 94
——where collateral security is given for debt, quaere, 114 C 94
obligations growing out of contractual relationship of stockholders of bank included any lawful liability created by statutes to respond to calls to meet claims of creditors, 119 C 83
contract of sale; condition implied that at time for performance value shall continue to exist, 120 C 390
agreement to install heater carries implied obligation to use proper care and skill in so doing, 121 C 231

a contract includes not only what is expressly stated but what is necessarily implied from language used, 121 C 290

where town, in return for L releasing attachment on truck belonging to H, who owed town money and had transferred to it truck to work off debt, agreed with L to turn over to it one-third of earnings of truck, *held* promise was implied that town would use truck so long as it had occasion to do so, 121 C 290

——and where town's program necessitated hiring trucks but it thereafter failed to use the H truck, it was liable to L for breach of contract, 121 C 290

promise not expressly made will not be read into contract unless it arises by necessary implication, 121 C 408

contract to sell "such quantity of ice as the city owns or shall harvest" did not by implication bind city to harvest any ice and where none was harvested did not obligate city to furnish any, 121 C 408

terms of contract between union and member are determined by constitution and by-laws existing when he became a member and as amended since, 128 C 381

§ 21. ——Time

to dig for gold; time gathered from words and intent, 23 C 186

"with all possible despatch," means in reasonable time, 33 C 22

"spring shipment"; must be by July first, 69 C 544

reasonable time for performance implied where none is stated, 73 C 484, 660, 75 C 300, 77 C 15, 78 C 137, 82 C 427, 87 C 50, 92 C 563, 93 C 385, 95 C 400, 97 C 17

services must be paid for in reasonable time, 75 C 300

"annually" held to mean any time during year, 76 C 504

time as of essence of contract, 76 C 629, 77 C 528, 88 C 60, 92 C 563

——it is, where forfeiture or option depends on it, 66 C 6, 383

six months a reasonable time in which to pay purchase price mortgage for $1000 on $6500 purchase, 77 C 12

"prompt shipment," "via H. R.," 77 C 104

where time of payment not specified, need not be made till contract is completed, 77 C 630, 80 C 132

agreement by stranger to pay deficiency on sale of collateral securing note requires sale in reasonable time; delay of two years too long, 78 C 137

order for payment of money not specifying time is payable immediately, 78 C 319

where A promises to pay B's debts, failure to do so for seven months is unreasonable, 87 C 50

if no time specified for performance, reasonable time meant, 95 C 400

if bond given subject to approval of trustees, they are bound to act within reasonable time, 95 C 408

where contract is silent, reasonable time for performance is implied, 97 C 168, 252, 98 C 321

reasonable time means what, 97 C 168, 252

provision for delivery at certain time "or as soon thereafter as possible" construed, 98 C 431

provision for extension of time of performance for "a week or so" construed, 98 C 780

——all circumstances are to be considered, 98 C 780

buyer may show that time was essence of contract of sale, 100 C 726

——but not from telegrams from his customer prior to date for delivery, 100 C 726

effect of indefinite extension of time for performance, 102 C 195

implied provision that possession be delivered within reasonable time, 102 C 557

meaning of "prompt" or "rush" shipments, 102 C 627

——depends on surrounding circumstances, as railroad embargoes and difficulty in securing cars, 102 C 627

effect of failure of bidder to present written claim for extension of time within forty-eight hours after the delay, as required by contract, 104 C 430

meaning of requirement for completion within "eighty working days," 104 C 430

in action for damages for delay, immaterial whether time was of the essence; when that is of importance, 104 C 431

contract *held* not to obligate buyer to pay balance of purchase price until deed tendered him, 105 C 219

where insurance policy permits insurance company to return stolen property reasonable time is implied, 106 C 519

when time is of essence in option contract, 107 C 460

where decision to exercise option to purchase must be made in given time, payment to be made within reasonable time thereafter, 107 C 716

where no time to complete is agreed upon, presumption is that completion is to be in reasonable time, 108 C 683

"forthwith" as meaning as soon as reasonably possible to attain end intended, 110 C 526

where contract for building is silent as to when it is to be finished law will presume a reasonable time intended, 111 C 342

——but if time to finish is fixed, law will not make presumption as to time of beginning work, 111 C 342

agreement to carry along a margin account without specifying definite time means for a reasonable time, 113 C 397

where contract gave option of cancellation on certain condition and was silent as to time, reasonable time will be implied, 113 C 759

requirement that coal would be delivered from boat arriving about February 20th met if delivered within reasonable time under circumstances, 114 C 492

——one of which might be delay due to bad weather, 114 C 492

sale made subject to conditions beyond control of vendor not invalidated because of delay due to storms, 114 C 492

general rule that law knows no fractions of day not operative against right and justice, nor when necessary to save vested right, 116 C 357

where shipments were to be made by vendor as specified by vendee it was duty of latter to direct shipments within reasonable time, 116 C 582

where insurance policy provided that on default of payment insured might, within certain time, have paid-up policy in certain amount, time is of essence of contract, 120 C 196

§ 22. ——Entire and Severable Contracts; Apportionment

note given on condition of child's life is subject to apportionment, when, K 366

an annuity is not subject to apportionment, 2 C 663

when wages may be apportioned where contract has been only partially performed, 25 C 192

——sickness an excuse for failure to do entire work, 25 C 194

process of garnishment does not lie until completion of contract not apportionable, 38 C 292

to build sewer at specified price on or before a certain day is not apportionable, 38 C 292

vote to guarantee bonds when road should be graded, 41 C 236

——bonds may be issued before such time, 41 C 236

——duty of town in guaranteeing not divisible, 41 C 237

——mandamus would lie only to compel guaranty of whole amount, 41 C 237

salary of school teacher $1200 a year; no express time of payment; *held* apportionable in monthly payments, 53 C 511

——especially where such was the understanding and practice of the parties, 53 C 511

——salary earned when last school day of month had expired, 53 C 511

——can be taken by foreign attachment although month had not expired, 53 C 511

contract *held* entire; cannot be affirmed in part without affirming it in whole, 57 C 47

contract of insurance covering buildings and contents with indemnity apportioned, *held* single and entire, 57 C 338

contract *held* to be single and indivisible, 91 C 123

whether entire or severable, how determined, 91 C 123, 94 C 461, 95 C 405

on question of whether contract is entire or severable, singleness or apportionability of consideration is important, 94 C 461

——may be entire though payments fixed on unit basis and made in instalments, 94 C 461

intent determines whether contract entire or severable, 94 C 461

in building sea wall if contract is entire, builder must replace part destroyed before claiming fulfillment, 94 C 461

may be entire though payment to two vendors made in different forms, 95 C 404

architect's contract to furnish plans and supervise erection of building is personal, entire and indivisible, 98 C 185

covenants to pay, and to refer to arbitrators to fix amount to be paid, are distinct and separable, when, 98 C 622

contract for goods to be delivered in weekly instalments, *held* to be single and indivisible, 103 C 172

contract for cropping operations on lands in different States *held* single and indivisible, 104 C 206

contract to sell units of common and preferred stock is not severable but entire; purchaser entitled to rescind if corporation has no power to issue common stock, 106 C 41

contract providing certain sum for work as a whole is entire although instalment payments are to be made as work progresses, 115 C 36

contract for services of lawyer for reasonable fee valid and separate and distinct from illegal and invalid taking of mortgage to secure them, 119 C 258

guaranty of agreement of car dealer with finance company was entire and continuing; not divisible as applying to transactions separately, 119 C 347

to sell oil burner installed entire contract, and purchaser could not keep attachments and reject burner, 121 C 231

sale of beer cooling equipment was entire contract, 121 C 655

——defendant had no right to accept one part and reject the rest, 121 C 655

§ 23. ——Conditions

promise to pay difference in value, on estimate of third person, is a condition precedent, 2 R 98

time is a condition precedent, when, 3 D 317

note with conditions precedent annexed; principal *held* payable only on performance of condition, 3 C 448
——but interest payable absolutely annually, 3 C 448
condition must be substantially, rather than literally, performed, 4 C 590
"provided," an express condition unless context shows it to be a covenant, 16 C 419
whether stipulations are conditions precedent; rules, 26 C 176
agreement to pay certain sum monthly for ten years for exclusive use of trademark, *held* exclusive use not a condition precedent to monthly payments, 50 C 148
enforceable "obligation" of subscriber same as subscription, 81 C 670
contract to take all of stock broker is selling not otherwise disposed of, is conditional on broker using due effort to sell otherwise, 87 C 138
if quarry is to revert in case no work is done for five years, only slight amount of quarrying necessary, 87 C 209
building of railroad not condition of right to quarry, 87 C 210
agreement to submit sample before shipping *held* condition precedent, 90 C 192
agreement to purchase if purchaser found product marketable and process practical; condition must be fulfilled, 90 C 669
provision for determination by third party as to value, price, etc., after performance is not agreement to arbitrate; not condition precedent to recovery unless made so by express provision or necessary implication, 98 C 616
provision will not be construed as condition precedent where it will cause injustice, 103 C 624
in sugar contract, provision for letter of credit to be furnished by buyer *held* independent promise, not a condition precedent, 103 C 625
condition precedent defined; construction depends upon intent of the parties, 104 C 374
provision not to be construed as condition precedent where unreasonable or inequitable, 104 C 374
lessee agreed to pay extra rent based on cost of alterations and bills after submission of receipts and vouchers and agreement as to amount; *held* submission and agreement not condition precedent, 104 C 374
where city promised contractor additional compensation if legislation authorizing it were enacted, this was condition precedent to obligation, 106 C 642
——but on passage of act promise became obligatory, 106 C 642
contract to furnish granite for building according to plans and specifications where these required submission of cutting and setting drawings for approval of architect, is not contract upon condition, 119 C 296
——obligation is upon party to furnish drawings which will be approved, 119 C 296
——hence where drawings were approved only after certain changes and defendant refused to furnish stone in accordance with changed drawings, he broke the contract, 119 C 296
whether promise to pay when promisor "is able" is one on condition or amounts to unconditional undertaking, 120 C 228
——majority and minority views, and cases cited, 120 C 228
——agreement that accumulated unpaid salaries should be paid by corporation "as receipts or earnings subsequently permitted," construed as conditional, since situation was practicably susceptible of proof, 120 C 221
——incumbent on plaintiff to prove fulfilment of condition before he could recover accrued salary, 120 C 221
——but designed prevention of happening of condition by B, such as expenditures incurred by corporation for that purpose, would excuse A from such proof, 120 C 221
where parties intended that agreement should not go into effect except on contingency which never happened, law would not give it force, 122 C 59
note given on condition that it would only be enforced if maker failed to give support to drawee if she ever needed it, never became legal obligation where drawee died without ever needing or asking support, 123 C 465

§ 24. ——Building Contracts

contract to build, plaintiff to furnish material; no action lies for not completing in time if material be not seasonably furnished, 2 R 5
building contract; forfeiture for failure to complete; agreement to accept and deduct allowance for unfinished portion *held* not a waiver of claim for damages, 28 C 490
contract to construct railroad for lump sum; contractors held not entitled to extra allowance because work exceeds estimated cost, 28 C 491
to construct depots according to dimensions to be furnished; where engineer gave dimensions larger than those stated at time of signing *held* contractors were still not entitled to extra allowance, 28 C 491
architect merely supervising builder under written contract has no power to order extras, 48 C 104
where deviation from special contract is not wilful and party has received the benefit, contractor may recover for material and labor furnished, 55 C 187

where defects are small and easily remedied expenses may be deducted from contract price, 55 C 187
where structure is reasonably adapted to the use intended but cannot be made to conform to special contract except at large expense, *held* contractor may still recover, 55 C 188
——especially where parties knew of variations but went into occupancy of building, 55 C 188
——but diminution in value by reasons of deviations from contract may be deducted from contract price, 55 C 188
upon the facts it was *held* that defendant employing outside help in completing building contract could not charge contractor with the extra sum so paid, 59 C 565
——when the contract required the certificate of the architect, and such certificate was not secured, 59 C 567
——though contractor neglected to do the work required, 59 C 565
extra work done for company by order of one director with knowledge of two or three directors *held* company taking benefit of work was obliged to pay what work was worth, 62 C 176
——even if director ordering was not authorized to bind company, 62 C 176
to "rebuild" means, as building was before, 74 C 208
contract to do plumbing for house, 74 C 418
reference to plan in building contract *held* to incorporate it, 76 C 84
contract for building abutments of bridge; dimensions given "minus or plus," 76 C 88
building contract; payment on certificate of architect, 79 C 491
——authorizing promisee to complete building at expense of contractor on architect's certificate of latter's default, 80 C 134
contract for furnishing stone for "Hartford" bridge, 80 C 160
building contract interpreted in accordance with city ordinances, not statutory requirements, 82 C 252
——whether fire-proofing is called for, 82 C 252
when a reasonable sum can be recovered on agreement to pay for new work, 82 C 252
no settled rule for interpreting building contracts; read in light of circumstances, 82 C 281
furnishing extra not "alteration" of subject matter of contract, 82 C 281
in rebuilding block, replacing of old sewer system was an "extra," 82 C 281
owner's oral order for extra work waives requirements for written order, 82 C 281
that work is in conformity with plans is shown by architect's certificate, 82 C 428
engineer to determine what is extra work, 82 C 484
building contract and specifications considered in determining if work is "extra," 82 C 484
"no alteration" except in writing does not apply to "extras," 83 C 442
contract to pay as building progresses means as work is performed and entire price may be paid before work is done, 84 C 487
if performance is to be to one's satisfaction, only dishonest dissatisfaction is a defense, 85 C 21, 88 C 619
agreement to do what is necessary "to perfect this work or which appertains to good practice," 85 C 584
unforeseen causes mean those not foreknown, 85 C 585
promisee is chargeable with notice of specifications referred to in contract, 85 C 585
while specifications and plans are part of contract, contract itself prevails; they do not restrict or extend its scope, 85 C 629
specific certificate required to take work out of contractor's hand; owner's expenses to be audited and certified by architect, 87 C 41, 93 C 238, 380
provision for "forfeit" for delay in building contract *held* liquidated damages, 88 C 620
if one contracts to erect and deliver completed building, title is in contractor and loss falls on him if building is destroyed prior to completion, 89 C 125
architect's decision final if made honestly, fairly, and in good faith; incompetency or negligence does not avoid it, 89 C 172
contract "to furnish sufficient number of mechanics," 89 C 382
contract construed as to who should seal joints in pipes, 89 C 382
provision that owner may withhold money on "evidence of any claim or lien," 90 C 7
under uniform building contract, owner cannot discharge contractor, complete building and resort to damages, 91 C 281
contractor not prevented from recovery by owner's completing work, 91 C 281, 92 C 427
architect's certificate given in bad faith loses its conclusiveness, 91 C 281
obligation to follow arbitrators' rules; misconduct on their part, 91 C 684
architect's certificate not conclusive as to value of alterations, 91 C 687
guaranty if "not enough money fifty days after entire completion of building" did not depend on completion of building, 92 C 278
owner cannot recover under uniform building contract where he finshes work unless his expenses are audited and certified, 93 C 238
owner can take possession of work only when architect certifies that there has been a default, 93 C 241

order drawn on owner payable on last sum due is not enforceable if no further sum becomes due, 94 C 562

delay due to owner's own fault will not justify his assuming work, 94 C 659

if contracts and specifications are ambiguous and owner's representative fails to solve them, owner and not contractor is responsible for delay, 94 C 659

agreement de commission of a general manager applied to contract for a second group of buildings as well as first group, 95 C 96

how commission figured in case of a cost plus contract, 95 C 96

where owner can retain portion of price to cover lien, contractor not entitled to interest on amount; can be waived, 95 C 337

owner to pay cost of building plus 10 per cent thereof; outside guaranty price, 98 C 661

——contractor to receive 25 per cent of saving, if cost less than $18,000; contract construed, 98 C 661

——method of computing saving in issue; owner's view upheld by court, 98 C 661

decision of engineer conclusive if made in good faith on question of leaving in sheathing under sewer contract, 100 C 147

implied provision in contract for construction work that promisee will do nothing to impede performance will not prevent any act provided for specifically, 100 C 148

municipal sewer contract interpreted to place duty of securing "rights of way" upon contractor, 100 C 148

——city might be under duty if contractor unable to do so, 100 C 148

contractor owes no duty to subcontractor to shore up building threatened by latter's work, 100 C 601

architect's certificate cannot be attacked except for bad faith, 101 C 208

——but this does not necessarily mean fraud or dishonesty, 101 C 208

——good faith requires him to exercise reasonable professional care, 101 C 208

——finding *held* to show bad faith on part of architect, 101 C 208

architect's certificate as condition precedent to payment, 101 C 208

building contract *held* not to permit owner to eject contractor for failure to supply sufficient workmen or materials, 101 C 217

whether architect's fee is part of contract for building in ascertaining whether contract is in excess of $25,000, 102 C 219

an order given to supplyman by owner constructing building directing payment when building is completed and accepted, refers only to fact and time of completion, 102 C 558

——if mortgagee on whom it is drawn forecloses and finishes building, order becomes payable, 102 C 558

contract *held* not to require cast-iron instead of tile pipe, 104 C 431

builder *held* not excused for delay resulting from change in lumber specifications made before contract executed, 104 C 431

provision that no part of work be sublet without engineer's consent does not prevent binding contract between bidder and one agreeing with him to do part of work, made before bid submitted, 110 C 235

——provision might be waived, 110 C 234

——or, if insisted upon, bidder might be liable to person agreeing to do work, 110 C 240

——if person agreeing to do work defaulted without performance, bidder would be relieved of necessity of seeking consent, 110 C 234

payment due at completion of job under order drawn by owner not payable where job completed by mortgagee, 110 C 564

——dependent upon such completion as would entitle owner to final payment under mortgage, 110 C 564

statutory bond by contractor for construction for town; filing notice of claim by materialman condition precedent to recovery from municipality; upon failure to do so cannot proceed against surety, 113 C 1

defendant constituted trustee to complete apartment house and distribute money from mortgages; various acts *held* not wilful misconduct under agreement, 113 C 429

"superintendence of owner" in construction contract *held* not to give owner control of manner and means of doing work; owner not liable for negligence of builder's agent, 114 C 32

decision of arbitrators that change in method of flashings over window of stone house resulting in leakage, was a minor change which architect had authority to make, *held* not so palpably wrong as to invalidate award, 114 C 429

contract will not be rendered divisible by fact that compensation is payable in instalments, 115 C 36

finding that builder entitled to allowance for extra work not reasonably indicated upon plans submitted to him or included in his bid, sustained, 118 C 325

provision in contract that acceptance by contractor of payment based on engineer's final estimate would be a release of all liabilities, *held* not to cover payment due by subsequent modification of contract as to compensation to be paid, 121 C 163

suit by State against contractor for failure of latter to maintain road closure signs

thus rendering State liable in personal injury action, 126 C 349

where payments are made contingent on issuance of architect's certificate, the issuance is condition precedent to right of payment, 126 C 502

amount due under a construction contract determined; rule of damages in suit for price where work was uncompleted, 127 C 75

§ 25. ——Miscellaneous Cases

"to the acceptance of commissioners" means a full, absolute, entire acceptance, 1 C 100

contract "to furnish comfortable support through life," a personal trust; place where such support should be furnished, 4 C 275, 407, 8 C 303

of written agreement to repair ship; certain repairs *held* extra and recoverable, 4 C 463

word "heir" may be used in contract to denote presumptive heir of living person; such intent may be shown by averment, 9 C 274

one does not "remove from limits of a society" by annexation of territory to adjoining town, so as to relieve from liability on notes given for support of society, 12 C 187

"or" construed "and," when, 13 C 116

of reward offered for detection of barn burners, 14 C 198

terms of contract *held* to vest an immediate though defeasible title, 14 C 477

to take eight hundred cords of bark yearly, means if it can be reasonably and practically done, 14 C 500

to furnish B all goods marketed, with liberty to B to decline, 15 C 254

covenant not to sue for act done is personal, 16 C 22

——in relation to third person is not a release, 16 C 22

promise to pay whatever balance shall be due on settlement, 18 C 127

covenant to pay for support of A and B during their lives, 18 C 519

"one-half the produce of farm" does not include timber, 18 C 519

promise to pay plaintiff's debts means according to their tenor, 21 C 126

contract for services in California, plaintiff to furnish help, defendant to furnish board; reasonableness of contract, 26 C 91

——board *held* to include board of help furnished, 26 C 93

——where defendant was unable to furnish work, plaintiff entitled to recover during period of contract, 26 C 94

——fact that plaintiff from time to time did work for other parties *held* not to affect, 26 C 94

contract to account for gold dug covers nothing else, 27 C 66

to deliver, imports delivery which will pass title, 33 C 496

"to take measures for forming company" does not bind parties to form company at all events, 39 C 304

sale of goods to be paid for in gold or its equivalent *held* not an alternative contract, 41 C 35

——plaintiff may recover value of gold at time debt is due, 41 C 31

to credit "what I may receive, etc.," applies to future credits only, 41 C 470

"to pay royalty during life of patents" does not mean during life of all the patents, 45 C 466

not to practice dentistry "within a radius of ten miles of L," means within ten miles from center of village, 47 C 177

for advertising space in a large number of papers; rights of parties, 51 C 424

——advertisement to follow markets *held* to mean next following, 51 C 426

contract by defendant to pay half the tax assessed against and paid by plaintiff; defendant could not take advantage of technical defect in levying the tax, 51 C 519

——and validating act healed the defect and was binding on defendant, 51 C 520

——even though the suit was pending when the act was passed, 51 C 519

promise to pay mortgage is a promise to pay mortgage debt, 53 C 181

A agreed to sell patents of B together with his own and pay B $8000, but sold only his own for $4000, those of B proving unsalable; *held* B entitled to recover $8000, 53 C 420

"estimated cost" means reasonable cost when no method of estimating is specified, 55 C 442

purchase note *held* part of contract and to be read as if inserted in it, 58 C 478

to employ person "as manager, superintendent, or agent in the needle business"; *held* work preliminary to setting up of machinery, etc., is within the terms, 61 C 62

——in absence of any special meaning attached by the parties to "needle business," 61 C 63

——whether such conclusion is a question of fact, quaere, 61 C 63

agreement to pay certain sum for use of patents; later agreement to deduct 15 per cent "as for advertising done and to be done as they might see fit"; *held* deduction fixed absolutely at 15 per cent, and not to depend upon amounts expended, 61 C 456

agreement in consideration that promisee "settle when adjusted" certain claims construed, 67 C 409

promise to bequeath requires unrestricted bequest, 68 C 91

agreement to supply water to persons "within a reasonable distance" of pipe line, 68 C 323
commission on sales of goods by corporation does not apply to transfer of all shares and property to new corporation, to reorganize, 69 C 304
promise by wife to furnish her husband money to use for partnership purposes, to be repaid to her son after her death, 71 C 245
contract of minister should be construed with reference to constitution of society employing him, 73 C 719
bond of telephone company as to use of poles belonging to city, 74 C 326
requirement of knowledge requires only facts from which knowledge would result if due diligence used, 74 C 546
agreement "we trustees," etc., *held* to exclude personal liability, 75 C 683
agreement to reimburse expenditures made on contracts assumed in purchase of plant; shop cost, 76 C 1
contract as to repayment of money retained out of premiums of insurance company *held* to constitute loan, 76 C 367
agreement to manufacture goods; quantity unspecified, 76 C 398
offer for sum of money and whatever else due on contract includes money due for extra work, 76 C 483
option contract to purchase bonds of company; effect of foreclosure sale and formation of new company, 76 C 629
contract of shipment of grain *held* not to determine point of shipment, 77 C 104
agreement restricting position of building, 78 C 232
contract to convey garbage; "crematory, buildings, wagons, and other appurtenances," 79 C 60
determination of water rate for several buildings in one close, 79 C 279
provision as to right of promisee to take work from promisor and complete it, to be strictly pursued and construed, 80 C 137
agreement de issue of Adams Express Company bonds of 1907, 81 C 529
"raised" in connection with conditional subscription; obligation to pay, 81 C 670
"good and sufficient stair cases . . . in case of fire" does not require fire-proof hallways, 82 C 252
under contract to share expenses and profits of sale of real estate, gratuitous payment not an "expense," 83 C 196
working to the "satisfaction" of another means honest satisfaction, 85 C 17
obligation of street railway to pay city when earnings exceed 6 per cent on capital, 86 C 188
intent determines whether one is tenant or lodger, 86 C 263
restraining physician from practicing construed to be limited to promisee's lifetime, or active practice, 87 C 23
drilling and blasting rock constitutes quarrying, 87 C 210
beneficiary society's contract construed with its constitution and by-laws, 87 C 644
where intention is to sell, that effect should be given to contract, 88 C 1
contract between owner of tobacco farm and dealer in fertilizers not "cropper" contract, 88 C 634
determination of which clause the delivery of certain metals came under, 89 C 571
agreement to deliver "offal and garbage" construed with reference to inclusion of foreign matter, 91 C 197, 93 C 277
agreement to live separate construed, 91 C 608
joint furnishing of cows for dairy business; equality of duty to ascertain incapacity of cows, 93 C 203
contract for disposal of garbage; cannot complain of small amount of foreign matter; bound by health regulations though contract is silent on it, 93 C 277
construction of cooperative agreement for manufacture of copper bands for projectiles, 94 C 311
parties did not intend to release indebtedness which was acknowledged and which was consideration of their agreement, 95 C 588
agreement to give "information of value" means something more than matter of common knowledge, 95 C 703
contract to employ one "as secretary of the company or in some superior capacity," 97 C 650
paragraph added to letter offering employment *held* to be separate agreement, 97 C 655
provision for determination by third party as to value, price, etc., after performance is not an agreement to arbitrate, 98 C 616
——is valid but executory until performed, 98 C 616
——not condition precedent to recovery unless made so by express provision or necessary implication, 98 C 616
contract by street railway as to repairs of bridge that it would perform all duties imposed by certain statutes *held* to mean as the statutes might be later amended, 101 C 137
——whether obligation contractual, or statutory, quaere, 101 C 137
promise to buy when party could "spare the money"; *held* an unconditional obligation to be performed within a reasonable time, 101 C 219
words "to be" used in imperative sense, 102 C 201

test for determining whether formal provisions printed on letterheads or forms are included, 102 C 626

——provision de fires, strikes, etc., *held* a part of the contract, 102 C 626

amendment indorsed on back of contract *held* to relieve defendant of obligation contained in original writing, 106 C 461

contract to pay "franchise and other taxes except upon tangible property," *held* not to include federal income and capital stock taxes, 106 C 563

promise to pay "on presentation of invoice," 107 C 41

contract to move dirt for "one dollar per cubic yard" *held* to mean dirt as it was loaded on carts, not as it lay, 108 C 126

whether indorsement on back of written contract, "contract expires" is a part of it or is a mere office record depends upon intention of parties, 108 C 534

contract with broker to be lenient with customer in time of stress, construed, 113 C 366

quotation of prices for excavation and acceptance *held* not final repository of final understanding; oral agreement determinative of how work was to be done, 113 C 734

lease to quarry rock; restriction against taking rock so quarry face will show construed, 115 C 70

between city and water company concerning rates and furnishing water for fire protection and municipal purposes, 118 C 389

agreement by employee not to solicit employer's customers if he left employment construed to mean solicit from them the same type of business, 119 C 289

general term in policy that terms conflicting with laws of State shall be inoperative and specific statutory provision shall supersede inconsistent condition in policy, does not incorporate into contract statute which is void, 119 C 416

agreement by A and B that any salaries not drawn in any year should accumulate on books of company and be paid as receipts or earnings subsequently permitted, 120 C 221

——construed as meaning that payments should be made only when funds were in such amount, in excess of current expenses and such reserves accumulated during busy seasons as would carry company during slack periods, as would permit withdrawals without prejudice to current business, 120 C 221

——and in instant case facts did not establish company's position to be such, 120 C 221

——and B's salary increase since A's retirement was not colorable or unreasonable, or such as to take up such margin, 120 C 221

stone masonry furnished but not cut, 121 C 492

action by town to recover charges for use of sewer and purification plant by R Co.; construction of contract by C Bros. with town to assume obligation of Water Co. under contract of 1898 with R Co., and that town would charge C Bros., for sewage from R Co.'s Mills, 121 C 617

construction of opinion of Supreme Court construing contract in former appeal; "occasion to use the truck," 125 C 215

agreement whereby defendant bought chickens, plaintiff raised them to broilers and defendant sold them; rights of parties where some were destroyed by hurricane, 126 C 707

agreement to sell gasoline for five cents under posted retail price construed, where retail price included taxes, 127 C 291

by-laws of local union with respect to paying dues construed; member did not infringe them so as to forfeit benefit insurance, 128 C 381

where vendor agreed to effect compromise settlement with his creditors, "creditors" construed to mean landlord and merchandise creditors only, 128 C 685

§ 26. Novation; Merger; Substitution

acceptance of note of one joint contractor extinguishes joint parol promise, 1 R 344

parol contract is extinguished by subsequent written contract to do same thing, 2 R 493

one simple contract is not merged by acceptance of another, 3 C 385

——second may suspend or modify first, 3 C 385

merger of subsisting contract in an award, 4 C 266

contract debt is merged in a judgment, 5 C 9

——aliter, if judgment be void for want of jurisdiction, 44 C 194

no merger in receipt reciting terms of contract, 13 C 491

written agreement merges preceding negotiations, 29 C 97

——previous parol warranty is inadmissible, 29 C 97

contract to build connecting railroad; roads connected to share expense and profits; later contract to run through trains and share profits; *held* no merger, 33 C 561

antecedent oral contract is merged in written one; limits of doctrine, 73 C 38, 75 C 455, 681, 79 C 135, 82 C 427, 86 C 393

——but representations before and after making contract may be evidence of interpretation by parties, 80 C 703

promise to marry on a day certain does not necessarily supersede promise to marry in reasonable time, 80 C 312

where contract is mutually rescinded and amount agreed to be due thereon is incorporated in later contract, former is merged in latter, 81 C 343
new agreement about matters in dispute takes them out of original contract, 82 C 252
antecedent oral agreement admitted to show agreement substantially same as original understanding, 82 C 427
merger of prior negotiations in written contract does not prevent action for fraud, 82 C 623
prior negotiations merge in written contract, 86 C 393
order by contractor on third party to pay materialman, not novation, 86 C 511
giving written guaranty does not merge obligation of guarantor as real secret owner of building, 92 C 284
one agreement superseded by later one which contained comprehensive settlement of whole matter, 95 C 589
assignment of stock subscription when accepted by corporation is novation, 101 C 291
novation is new contract introducing a new party; a substitute is a new contract between same parties, 107 C 40
——no difference in legal effect, 107 C 45
——new contract covering same or substantially same ground as former will generally be held to abrogate it, though this not expressly provided, 107 C 45
——answer to complaint based on contract to sell coke that after disputes had over delays in shipment, a new contract was made at different price and with provisions as to demurrage, etc., *held* not to allege executory accord, but new agreement, 107 C 40
——particularly in view of unforeseen circumstances which had arisen and made the contract of little value and buyer's claim that it was unenforceable as within Statute of Frauds, 107 C 40
letter from insured to insurer stating it had paid premium on policy to agent and received credit in certain amount "closing your account with us" *held* not to work novation so that agent and not company was liable for return of unearned premium on cancellation of policy, 109 C 609
agreement to excavate rock without charge if general contract was awarded plaintiff, *held* merged in that contract when made, 114 C 250
assumption by owner of contractor's liability for materials furnished in which subcontractors joined was novation, 116 C 273
plaintiff sold defendant soda fountain on conditional sale and after latter defaulted in payments, negotiated with him for payment; *held* on record there was no agreement for accord and satisfaction or substitute contract, 117 C 1
recognition by lessor of assignee of lease as his immediate tenant with latter's consent as novation, releasing lessee, 118 C 86
in written lease tenant covenanted to leave premises in as good condition as same are or shall be put in by lessor; no covenant for tenant to repair, 119 C 398
——whether tenant could prove oral agreement of landlord to replace floor of porch depended on whether parties intended written lease, subsequent to agreement, should embody entire agreement, 119 C 398
——and complaint laid basis for proof on question of merger, 119 C 398
contract providing that it may be modified or abrogated by mutual consent, may be terminated at any time by agreement of all the parties, 122 C 56
contract to furnish headstones made with adjutant general was superseded by one made to same effect but for shorter term with veterans' home commission, when statute amended to authorize latter instead of former to make such contracts, 124 C 304
——second contract substituted for first and discharged it, 124 C 304
claim of substituted contract entered into in settlement of disputed claim not sustained, where court found that debt was for sum certain, 126 C 44
where new contract is substituted for existing obligation, on partial failure of consideration damages are to be based on it, not original obligation, 126 C 160

§ 27. Modification; Waiver

alteration of, while executory, requires no new consideration, 5 C 560
material alteration by stranger does not render instrument inoperative, 10 C 197
any material alteration of completed writing without consent, releases parties, 31 C 181
retention of part of monthly salary for condition broken; condition subsequently waived and full monthly payments thereafter made; *held* that the monthly payments retained had been waived by acceptance of later payments as in full, 55 C 504
while in force is alone evidence of intention of parties, 58 C 40
——may be modified subsequently by oral stipulations, 58 C 41
——unless such modified agreement is within Statute of Frauds, 58 C 41
what constitutes a waiver of contract, 59 C 560
claim for extra work; promise to pay *held* admissible to prove waiver of provision that claim should be in writing, 59 C 561
fact that party failed to comply with conditions, *held* no evidence of intention to waive by party benefited, 59 C 561

declarations of defendant's agent that forfeiture for failure to build within time limit would not be exacted, *held* admissible as showing waiver, 59 C 563

——but only for a particular instance, 59 C 563

a later agreement signed by one party and accepted but not signed by the other, *held* to operate as a modification of the original contract, 61 C 463

minds must meet on alteration; continuing performance after receipt of proposition to alter not assent to alteration, 66 C 68, 79 C 624

builder not liable for defects due to architect's plan which he is bound to follow; parol agreement cannot add this liability to written contract, 70 C 450

alteration may bind subcontractors, 74 C 493

acceptance of note under terms of contract not assent to proposition to alter contained in letter accompanying note, 76 C 130

no alteration by furnishing work and labor not in original contract, 82 C 281

oral direction by owner waives provision of contract requiring written order, 82 C 281

original contract changed by mutual consent becomes new one, 82 C 293

despite provision that terms are not to be altered except by writing, parol evidence can show failure to perform was induced by parol representation of other, 82 C 383

evidence admitted to show changes in building plans whereby large amount was saved on contract price, 82 C 427

where time for completing contract waived, no advantage taken of delay, 82 C 428

building contract can always be altered by parties; may be implied or oral, 82 C 432

"no alteration except in writing," does not apply to "extras," 83 C 442

renewal of written contract, orally or by acquiescence, carries with it former terms that are not inapplicable, though specifically limited, 87 C 23

amendment changing consideration construed so as not to alter other terms of contract, 87 C 23

owner of building may waive terms in contract, 89 C 172

written contract may be modified subsequently by agreement, 89 C 383

change in family not sufficient to alter contract for domestic service, 90 C 611

preceding oral agreement admitted to show if written memorandum was whole agreement, 92 C 420

valid contract can be abrogated or modified only with consent of both parties, 92 C 569

parol cannot vary absolute indorsement "without recourse," 92 C 590

parol evidence admitted to show cellar included in lease of living room, 92 C 698

proof of a custom usual in work contracted for does not vary contract; it is implied in the contract, 93 C 615

only mutual agreement can change sale into one by sample after it is made, 99 C 296

notation on copy of contract annexed to complaint "acceptance and variations made by parties by correspondence after date of order" *held* to justify evidence of change not otherwise pleaded, 100 C 720

extension of time of performance of written contract by oral agreement, 101 C 265

written proposal to alter oral contract must be accepted by other party, 102 C 152

subsequent writing does not necessarily supersede earlier, where such effect not intended, 102 C 170

effect of indefinite extension of time for performance, 102 C 194

lease not altered by subsequent bond merely given to ensure performance of covenants, 102 C 692

where parties agreed to change in specifications in somewhat indefinite way with change in cost and later finally agreed on definite change, latter agreement merely made certain earlier attempt and change in cost remained as then fixed, 104 C 430

waiver by vendor of provision requiring weekly payments; can only be again enforced after notice to vendee; effect of subsequent promise by vendee to make payment on certain day, 105 C 672

continuation of time for performance by mutual agreement when original term rendered impossible, 106 C 484

after contract made by defendant to do part of work for which plaintiff submitted bid, unauthorized attempt of plaintiff to charge part of bond to defendant does not alter contract relations, 110 C 240

policy of life insurance is contract and unless rights in others have been created it may be altered by agreement of parties, 120 C 306

oral modification of written contracts; rule against admission of parol evidence does not apply to establishment of agreement subsequent to time instrument was executed, though such agreement changes writing, 120 C 568

——such parol evidence does not controvert original agreement but shows parties have, for consideration, modified it, 120 C 568

in absence of statutory restrictions, written lease may be subsequently modified as to amount of rent, by oral agreement; parol evidence rule not violated, 120 C 568

——claim that agreement violated Statute of Frauds and that it lacked consideration met by fact that reduced rent was paid and accepted, 120 C 568

where holder of instalment note accepted less amount than that due, in ignorance of provisions of note, no modification of contract, 121 C 147
——such a modification would be limited by intent of parties, 121 C 147
liability of water board of Hartford under agreement modifying contract for construction of dam, to save plaintiff harmless from loss due to increased costs resulting from war, 121 C 163
though a contract be under seal it may be varied by parol agreement, 121 C 163
unless prevented by Statute of Frauds, written contract may ordinarily be modified by parol agreement after its execution, 121 C 182
——and fact that contract contained provision that no change should be made in it except in writing nil sig. if circumstances indicated that this provision was waived, 121 C 182
——and such waiver arises out of the parol modification, 121 C 183
in New York, where a contract is under seal a subsequent contract designed to modify it, so far as unexecuted must itself be under seal, 121 C 281
——where modified contract is wholly executed on both sides, plea that modification is not under seal will not avail parties, 121 C 287
——so support agreement under seal *held* not modified by subsequent agreement not under seal, 121 C 281
——that latter agreement was referred to in divorce judgment which was under seal, nil sig., 121 C 281

§ 28. Rescission and Abandonment

§ 29. ——In General; By Agreement

rescission of contract must be mutual, 3 C 353, 59 C 561
rescission requires the concurrent action of both parties; is distinguished from waiver, 59 C 561
to abrogate a contract, as well as to make one, requires meeting of minds, 81 C 479, 86 C 501
use of stone with knowledge of plaintiff's claim that they were extras does not constitute rescission of written agreement, 82 C 485
no breach by termination of contract can be claimed against promisee where promisor has already abandoned it, 82 C 646
contract cannot be repudiated without notice to other party, 83 C 38
attempted revocation of order after acceptance does not relieve from liability, 83 C 520
no mutual rescission of sale though vendor failed to deliver, 83 C 528
defense of rescission must be pleaded, 83 C 528, 86 C 22
resale of goods not paid for, not necessarily rescission, 86 C 22
repudiation of oral agreement by A may be treated as nonexisting by B, 86 C 453
contractor abandoning building ends contract; liens are defeated, 87 C 686
repudiation of executory contract does not end it unless acquiesced in, 88 C 23
election of owner to proceed under contract where contractor has abandoned work is an acceptance of work done and waiver of right to terminate contract, 89 C 262
evidence of original contract and what was done under it relevant to prove probability or improbability of agreement to rescind, 91 C 1
valid contract can be abrogated or modified only with consent of both parties, 92 C 569
acquiescence in cancellation of an uncompleted order, 94 C 311
owner who seeks to terminate must be without fault, 94 C 660
——must act in accordance with terms of contract, 94 C 679
that contract might be terminated on one basis does not justify unlawful action on another, 94 C 661
right of owner of building to withdraw from contract with architect for plans and supervision of building on paying damages, 98 C 186
one party cannot terminate an executory contract, 98 C 735
——other party may insist on his right to performance if able and ready, 98 C 735
——but if not, he cannot retain money advanced to aid him to fulfil contract, 98 C 735
rescission is affirmative defense which plaintiff not bound to meet in first instance, 100 C 39
——though his own evidence established it, nonsuit not proper, 100 C 39
mutual rescission is itself a contract and must be supported by consideration, 102 C 627
letter stating "we will cancel balance of the order" *held* merely an offer to rescind it, 102 C 627
——of no avail if party chooses to stand on right to reject articles as not complying with contract, 102 C 627
right of repudiation in contract must be exercised within reasonable time where contract is silent, 113 C 759
F gave bond to plaintiff on which defendant was surety to erect building within ten years and later renounced promise; *held* defendant not liable on bond, before end of ten-year period, 115 C 375

renunciation of executory promise requires clear indication of repudiation by promisor and acceptance by promisee, 115 C 375

——such renunciation is a voluntary transaction substantially changing rights of parties, 115 C 375

where certificate of benefit for employees provided that employer might revoke at any time and employee died on same day notice of revocation was given, he was permitted to recover, 116 C 357

correspondence between company and employee *held* not to have terminated employment status and latter's widow entitled to recover under certificate of benefit, 118 C 658

agreement in settlement between mother and son containing provision that it might be terminated at any time, under which she was to hold stock in trust, validly terminated by later agreement which gave her stock absolutely, 122 C 48

contract providing that it may be modified or abrogated by mutual consent, may be terminated at any time by agreement of all the parties, 122 C 56

§ 30. ——Invalidity of Contract or Failure of Consideration

right to rescind always exists in case of fraud, 56 C 492

one seeking to avoid contract for fraud must restore other party to former condition, 58 C 38

——offer should be made as soon as fraud is discovered, 58 C 38

party can rescind contract for fraud if one acts quickly, 82 C 624

false representations of facts to one ignorant of them, with intent to defraud, is ground for rescission, 85 C 557

defendant, induced to enter into contract by fraudulent representation, might rescind contract if she acted seasonably, 86 C 107

if credit agreement is fraudulently obtained, different purchases treated as different transactions, 91 C 482

contract to sell units of common and preferred stock is not severable but entire; purchaser entitled to rescind if corporation has no power to issue common stock, 106 C 41

right of purchaser of stock to return of consideration on failure of corporation to file necessary certificate for change of stock to that having no par value as agreed, 106 C 41

——dividends received need not be returned or offered back before action brought, 106 C 42

defective steering wheel not a failure of consideration justifying rescission, 110 C 255

disaffirmance of contract by minor; Compensation Act, 112 C 459

material misrepresentation, though not knowingly made, which goes to root of contract and induces party to enter into it, may justify rescission and damages based on rescission, 114 C 250

——party may continue to perform and recover damages resulting from the misrepresentation, 114 C 250

contract to sell burner to defendant "installed" was more than contract of sale; it carried with it implied obligation to use care and skill in installation, 121 C 231

——failure to perform this executory promise might constitute failure of consideration entitling defendant to rescind, but only if promise broken was vital to contract, 121 C 235

——in instant case defendant's conduct in removing burner but retaining and using equipment installed with it to value of $105 forfeited his right to rescission, 121 C 231

——since contract was entire, not divisible, defendant could not accept one part and reject rest, 121 C 236

——but defendant entitled to set off against balance of purchase price, damages from faulty installation, 121 C 231

§ 31. ——Other Grounds for Rescission

absolute refusal by one party to carry out his part of contract is equivalent to an abandonment, 54 C 328

——gives other party right to rescind and recover money paid by him, 54 C 328

fact that extra work provided for in building contract was called for by defendant, *held* inadmissible to prove abandonment, 59 C 556

equivocal conduct or conduct of doubtful import is not sufficient to show abandonment, 59 C 557

prevention of performance by promisee as ground for rescission, 80 C 134

contract rescinded if buyer refuses to accept carload of goods after they reach destination because not up to quality, 83 C 65

if vendee's repudiation of contract not accepted, title vests in vendee, 86 C 494

breach by one party alone can occur only after time for performance has arrived, 86 C 501

——there can be no anticipatory breach by one party without acquiescence of other, 86 C 501

contract may be rescinded where one without his fault is prevented from performing it by other, 87 C 42

refusal of landlord to perform covenants is attempted repudiation, 87 C 400

vendor need not wait for time to expire if vendee definitely and unqualifiedly repudiates contract, 88 C 130, 90 C 286

jury determines if oral agreement has been repudiated, 90 C 286
cannot rescind contract where failure to comply with terms has been acquiesced in for long time, 91 C 198
nonperformance evidenced by acts, conduct and declarations of employees justifies rescission of employment, 91 C 348
unequivocal refusal to perform unless other party will consent to modification is breach, 92 C 569
——such repudiation authorizes other party to treat agreement as rescinded and sue in damages, 92 C 569
if payments are made and accepted after time set, promisee cannot refuse a later payment and declare contract surrendered, 92 C 693
——to renew provision as to payments notice must be given to that effect, 92 C 693
noninsistence on strict observance of terms; party cannot thereafter peremptorily cancel contract, 98 C 731
——must first give reasonable notice of intention to require strict performance, 98 C 732
——and an opportunity for other party to comply therewith, 98 C 732
notice of election to terminate may be renounced by subsequent conduct, 101 C 208
——especially where other party continues to insist upon performance, 101 C 208
——conduct *held* not to show abandonment or anticipatory breach, 101 C 208
a breach may consist in failure to give party opportunity to perform services for which other has agreed to pay him, 102 C 287
——as soon as other denies that opportunity promisee can declare contract at an end, 102 C 291
plaintiff cannot repudiate because of fear that ambiguous contract would require him to do something other party did not claim it would and trial court found it would not, 106 C 463
impossibility of performing executory contract by event over which neither party has control; legal implication of termination unless repelled by facts, 106 C 484
in case of breach of essential element of compromise contract, other party may treat it as rescinded, 112 C 58
letters stating that corporate existence of vendee was being terminated, etc., *held* not renunciation of obligation to give orders for shipping materials contracted for, 116 C 582
——and clause as to uncertainty of time of payment no repudiation of obligation to pay within thirty days, 116 C 582
——inference of ultimate breach could not be drawn, 116 C 582
——no right in vendor to rescind and sue for damages or to treat contract as still existing, tender performance, and sue for purchase price, 116 C 582
material breach by contractor in failing to furnish stone to subcontractor which amounted to refusal to perform excused further performance by latter and justified him in rescinding, 121 C 497
where wife without her fault is prevented by husband from performing her part of marital contract, she may treat it as rescinded and recover quantum meruit, 123 C 88

§ 32. ——Election to Rescind; Effect of Rescission

See also Fraud § 13; Sales § 15

effect of a rescission of contract upon the respective rights of the parties, 55 C 551 (note)
party defrauded may rescind contract or affirm it and sue for fraud, 64 C 127, 86 C 100, 90 C 624
whether action taken in reasonable time is question of fact; rescission on day of discovery of fraud, 66 C 589
——rescission in fifteen days reasonable as matter of law, 66 C 400
on mutual rescission money already earned remains due, 69 C 333
institution of action to recover property is rescission of contract; placing purchaser in status quo, 73 C 547
where both parties have mutually rescinded and abandoned contract, money paid in part performance may be recovered, 78 C 459
whether contract induced by fraud gives an election of remedies, quaere, 82 C 624
on rescission for fraud, plaintiff is entitled to restoration and no more, 85 C 558
——must restore to defendants what he received from them, 85 C 558
rule that one asking for rescission cannot retain consideration applies only when one from whom relief is sought acted in good faith, 85 C 567
repudiation of fraudulent contract is evidenced by acts and conduct of defrauded party; is question of fact, 86 C 252
in fraud, can rescind contract and recover payment, or accept contract and recover damages, 86 C 481, 91 C 123
abandonment by vendee does not ipso facto forfeit his interest after part payment, 90 C 555
action to replevin goods fraudulently obtained, rescinds contract, 91 C 482
if vendee through fraud made contract, he may rescind by restoring vendor to his former position, 93 C 690
what is reasonable time to rescind is for jury, 93 C 690
quantum meruit lies where parties agree to rescind contract partly performed, 97 C 94

refusal to accept goods not yet deliverable gives no right of action unless seller signifies intent to treat it as repudiation, 98 C 414

distinction between rescission which terminates all rights and one which involves abandonment of performance but permits rights under it to be enforced, 98 C 666

——is question of intention, 98 C 666

——notice after failure of performance that promisee has "rescinded" his contract followed by suit indicates latter intent, 98 C 666

until buyer discloses unequivocal intent to repudiate contract seller not put to option to determine whether to accept it, 98 C 689

money paid on contract afterward rescinded, is never forfeited unless contract so provides, 98 C 734

rescission or repudiation of contract must be made within reasonable time after discovery of fraud, 100 C 147

——party cannot continue to perform and then sue for rescission, 100 C 147

whether party has waived right to rescind ordinarily question of fact, unless only one conclusion reasonable, 102 C 137

ignorance and stupidity as affecting waiver of right to rescind, 102 C 138

party seeking rescission must restore adversary completely in status quo, 102 C 138

repudiation of partially performed contract gives seller option to accept renunciation and sue or to tender full performance and to sue for nonacceptance of goods, 103 C 172

——in latter case no issue is raised as to seller being ready and able to perform but question is, did he properly tender performance, 103 C 172

——where buyer is requested to withhold deliveries contracted to be made weekly but finally takes all in hands of seller and repudiates balance of contract, seller may tender goods within a reasonable time after, 103 C 172

what constitutes waiver where the action is based on rescission, does not necessarily do so where the action is for damages for breach of the contract, 103 C 237

buyer cannot rescind unless he acts promptly after discovery of the fraud, 103 C 302

rescission must be made with reasonable promptness; right lost after three years of performance, 104 C 271

rescission for fraud must be made promptly and any goods received returned, 105 C 434

infant, seeking to disaffirm contract, must put other party in status quo only when he is in possession of the specific consideration received by him, 108 C 528

tender of reconveyance unnecessary to repudiate contract of purchase where no title has passed, 111 C 269

plaintiff to whom car had been returned tried to collect purchase price and notified buyer he would resell and sue him for difference; *held* there was no rescission, 112 C 646

——registration of car by seller after return for restricted purpose, *held* not to rebut this conclusion, 112 C 650

plaintiff may either disaffirm transaction, return money received and recover back his property or affirm transaction and recover damages for fraud, 114 C 116

——he cannot pursue both remedies, 114 C 116

incumbent on buyer who rescinds contract of sale for breach of warranty to establish that goods he offers to return are in substantially as good condition as at the time of transfer to him, as required by statute, 116 C 579

——and where no finding or evidence that car which had been used six months was in substantially as good condition as when bought, judgment for defendant correct, 116 C 579

——whether inference from six months user admissible, quaere, 116 C 579

——whether "condition" in statute can be construed as "value" quaere, 116 C 579

where lessee abandons premises and refuses to pay further rent, landlord may accept surrender thereby terminating lease and effecting rescission, or he may refuse to accept surrender, 120 C 315

——whether taking possession of premises constitutes rescission of contract depends on intent, 120 C 318

——where there is rescission, action is one for damages for the breach, 120 C 318

——as where lessor manifests intent by bringing action for damages for breach of contract, 120 C 318

right of rescission and restitution as alternative remedy to damages where aggrieved party has performed fully or in part, and wishes to recover what he has given or its value, 121 C 548

——such a right may exist when land has been conveyed and grantee fails to keep a promise made in consideration, though ordinarily specific performance or judgment for purchase price are adequate, 121 C 548

where plaintiff sold beer pump and equipment to be installed at a unit price, contract was not divisible and buyer could not rescind where he had used a part of the equipment, 121 C 653

in actions for rescission of contract, a party, as condition precedent, must restore or offer to restore other party to his former condition as nearly as possible, 122 C 429

§ 33. Performance or Breach

§ 34. ——Generally.

express promise to pay sum of money cannot be discharged by promisor doing something else, 2 R 215

contract to distill, keep account, and deliver part on demand; no action lies until full time has elapsed, 3 D 289

——unless defendant did not distill at all, 3 D 292

conditions are to be substantially as well as literally performed, 4 C 590

promise to settle estate is performed only by complete legal settlement, 25 C 462

——failure not excused by disproportionate expense, 25 C 463

contract for services; failure of defendant to furnish employment does not prevent recovery by plaintiff, 26 C 94

——fact that plaintiff from time to time did work for others *held* not to affect, 26 C 94

"to take measures for forming company"; *held* sufficient if parties make all reasonable effort, 39 C 304

intent and belief that work is performed is not enough; no recovery can be had on contract unless in fact performed, 42 C 229

to make and sell certain patented articles only; alleged violation; immaterial differences in two machines do not make them different machines in law, 42 C 362

reasonableness or unreasonableness of contract generally immaterial, 44 C 223

——to make a bust to defendant's "satisfaction"; court will not look at reasons for defendant's dissatisfaction, 44 C 223

agreement to pay for mortgage note by money raised from sale of wood on premises mortgaged not fulfilled by tender of order for payment of wood sold, accepted by purchaser, 67 C 585

agreement to bequeath stock requires unconditional bequest; if not made, promisee can recover stock, 68 C 91

where contract with corporation requires renewal of its terms or payment of sum of money, effect of promisor's promoting reorganization of company which renders renewal impossible, 69 C 304

inspection required where contract provides for repair of road subject to approval of inspector, 70 C 588

agreement to assume and pay indebtedness and save original debtor harmless broken when; defense that promisee broke agreement not to engage in business in competition with promisor, 71 C 166

effect of inclusion in books contracted for as historical of much nonhistorical matter, 72 C 361

readiness to perform as performance of contract, 73 C 39

where city cuts poles which it has agreed to let telephone company use, city is liable on contract, 74 C 326

under agreement as to manufacture of goods not specifying quantity, party for whom they are to be made need not give any orders, 76 C 398

performance by promisee as condition precedent to recovery; promise to deliver fifty shares of stock not fulfilled by offer of assignment of that number out of block of fifteen hundred, 80 C 128

failure to perform bars recovery unless one wrongfully kept from performing, 81 C 615

no breach by termination of contract can be claimed against promisee where promisor has already abandoned it, 82 C 646

where three notes not executed as agreed promise was broken; when first falls due, can sue for breach or for instalment due at the time, 83 C 31

architect cannot recover for plans for building to cost more than ordered, 83 C 40

payment each week is performance of a contract to pay as building progresses, 84 C 487

architect can state deductions allowed for defective work and give opinion of work without stating manner of performance, 84 C 501

if performance is to satisfaction of promisee it means his honest satisfaction, 85 C 21

effect of making a payment where failure to perform is claimed, 85 C 180

no recovery on special contract unless full performance proved, 85 C 180

performance of conditions of an insurance policy necessary; may be waived by insurer, 86 C 15

work actually done *held* sufficient to keep alive right to a quarry, 87 C 209

refusal to perform continuing contract is breach; can sue at once, 91 C 197

offer to perform after breach is immaterial except as to damages, 91 C 197

after breach, subsequent offer to perform does not revive agreement, 91 C 198

failure of contractor to continue work after wrongful discharge is not wilful default, 91 C 281

paying balance due on building contract and taking possession does not relieve contractor from full performance, 91 C 657

plaintiff must show performance of his own obligation, 93 C 208

to permit recovery by owner, architect's certificate must state that refusal or neglect of contractor was sufficient to terminate contract, 93 C 234

conditional offer to resume work after breach does not obliterate breach or revive contract, 93 C 277

frozen condition of wall can be shown to prove defect not due to workmanship, 93 C 381

defects due to acts of promisee not chargeable against contractor, 93 C 386

bond to secure performance of contract is broken when work is abandoned, 94 C 240

where another contract is to be performed concurrently, delay as to one may affect performance of other, 94 C 659

where promisee authorizes payment of contract to be made by mailing a check, debtor performs duty by mailing check at proper time, though it is lost in mails, 97 C 353

failure of receiver to adopt executory contract operates as breach from his appointment, 98 C 414, 428, 432

failure to establish credit for executory purchase as agreed is breach of mere auxiliary term for seller's benefit, 98 C 666

party cannot claim benefit of provision for liquidated damages, where he has not performed his part, 101 C 265

promisor cannot escape liability by preventing event upon which his duty depends, 103 C 693

in action for damages for delay, immaterial whether time was of the essence; when that is of importance, 104 C 430

before one demands conveyance of mortgage for the purchase of which he has advanced funds to another, he must pay or tender balance due, 105 C 544

where promises are mutual and dependent, neither party can recover damages for breach without showing tender, notice equivalent to offer to perform or valid excuse, 105 C 657

power of either party to break contract and pay damages for breach, 106 C 642

promise to send check in settlement of case must be performed within reasonable time, 107 C 491

finding that contract to build had been partially performed upheld, 107 C 532

——finding that extras more than equalled by omitted items not contradicted by finding that only extras for which contractor intended to charge amounted to $27, 107 C 532

——court not bound to accept value placed on omitted items by party, 107 C 532

——discrepancy in any event, amounting to $21, too trivial to justify new trial, 107 C 532

telegraph company liable for causing breach of contract for failure to deliver telegram which closes contract, 109 C 371

law implies that contract is to be performed in reasonable time; parol evidence inadmissible where written contract silent, 111 C 342

contract to secure return to defendant of money held by attorney *held* not performed by plaintiff, 113 C 761

where agreement to forbear contained no provision that mortgage securing it should be first lien, fact of prior incumbrances gives creditor no right to treat it as broken, 114 C 94

failure to offer proof that plaintiffs were ready to execute certain releases does not justify verdict for defendant where they would not naturally be executed until both parties had performed the obligations of the agreement, 114 C 614

where holder of note made contract involving its assignment to indorser, and the latter failed to perform his obligation under contract, holder could sue on note, 114 C 620

builder who has ceased to perform cannot recover save by showing that owner breached contract, 115 C 36

conduct contrary to the provision of a covenant is a breach of it and gives rights to at least nominal damages, 115 C 127

where two or more combine to do unlawful or fraudulent act and thus breach a contract it is actionable conspiracy and if carried out all and each participating are liable in damages, 116 C 278

agreement to compensate by conveyance of farm or provision in will not breached by conveying farm to others, 116 C 278

employee holding certificate entitling him to death benefits, died 2 a. m. of day on which employer cancelled certificate; *held* beneficiary entitled to designated benefit, 116 C 357

the entire day upon which a contract expires is open for compliance with it, 116 C 357

where there is in fact a breach of warranty a defense of good faith is immaterial, 116 C 579

if person to whom money is due authorizes its transmission by mail, person from whom it was due is absolved by evidence that it was duly mailed with proper direction, 116 C 666

P deposited $1200 with title company and agreed to remove old mortgage on property to its satisfaction within reasonable time, so that mortgage to mortgage company should be first; *held*

——judgment of quiet title obtained by P (which did not satisfy title company) was rendered without jurisdiction, 117 C 39

——there was no equitable ground to extend time for plaintiff to perform after lapse of seven years, 117 C 39

——money should be paid to mortgage company, 117 C 39

conclusion that refrigeration equipment when installed was not defective, sustained, 117 C 460

action for alleged breach of agreement by defendant respecting a mortgage loan and for assumption of management of property, etc.; verdict for plaintiff based upon misconception of issues, 118 C 581

contract to furnish granite for building according to plans and specifications where these required submission of cutting and setting drawings for approval of architect, is not contract upon condition, 119 C 296
——obligation is upon party to furnish drawings which will be approved, 119 C 296
——hence where drawings were approved only after certain changes and defendant refused to furnish stone in accordance with changed drawings, he broke the contract, 119 C 296
verdict based on breach of contract by bank in failing to hold checks for plaintiff deposited with it as agent, sustained, 121 C 201
contractor's failure to furnish stone masonry of size reasonably ready for the work was breach of contract with subcontractors, 121 C 492
plaintiff was paid compensation provided in PWA contract between contractor and State for his class of work, assistant carpenter, and he was not denied employment in breach of the contract, 124 C 1
——to recover for breach of provision giving preference to local labor it was incumbent on plaintiff to show he was denied employment as assistant carpenter and that contractor with knowledge of his qualifications employed other assistant carpenters not residents of town, 124 C 6
on proof of demand for performance and refusal to perform or set time for performance by other party, right to recover for breach complete if party willing, able and ready to perform, and no actual tender is necessary, 124 C 507
conclusion that there was breach of employment contract sustained, 124 C 539
deposit of cash for performance of contract by third party, with agreement for its return upon performance, was in nature of penalty, 128 C 146
——where contract faithfully performed except as to one provision, from breach of which there was no damage, cash should be returned, 128 C 146

§ 35. ——Substantial Performance

substantial performance of building contract is sufficient, 20 C 318
——law applicable to such contracts stated and applied, 20 C 318
where structure reasonably adapted to use intended cannot be made to conform to special contract except at large expense, contractor may still recover, 55 C 188
——especially where parties knew of variations but went into occupancy of building, 55 C 188
——but diminution in value by reason of deviations from contract may be deducted from contract price, 55 C 188
agreement to furnish book with map of city showing streets, etc.; *held* map must be of substantial but not absolute accuracy, 56 C 524
slight departure from terms of building contract or failure of architect to approve as justifying its termination, 69 C 60
substantial performance with deduction for defect, 74 C 418, 80 C 611
substantial performance of building contract entitled contractor to recover price less loss due to him, 84 C 702, 91 C 280, 93 C 380
retention of benefit of work costing less than contract, but done contrary to specifications, must be paid for, 84 C 702
builder has right to recover on substantial performance, if work is beneficial and accepted, though not according to contract, 85 C 180
substantial performance of building contract, with no wilful default, entitles contractor to recover, 91 C 280, 93 C 380
substantial performance, question of fact, 91 C 281
building contract; contractor who has substantially completed his contract, can recover, with deductions for unintentional variations and omissions, 97 C 92
to recover reasonable value, contractor must substantially perform, 102 C 152
a charge upon the doctrine of "substantial performance" should adequately define term, 103 C 553
——doctrine can only be invoked where defaults are not wilful or voluntary, 103 C 553
recovery for substantial performance when contractor not wilfully and in good faith deviates slightly from contract, 108 C 186
finding of jury of no substantial failure of performance *held* warranted, 110 C 381
——particularly with reference to stucco on foundations, 110 C 381
question of whether there was substantial performance of building contract one of fact; in present case, facts justified conclusion that there was, 112 C 381
contractor who did not complete $15,000 contract for road with town, which town finished at cost of $963, *held* to have substantially performed contract and his assignee entitled to balance due less $963, 120 C 274
——no wilfulness in failure to complete, which was due to financial inability, 120 C 274
where burning of buildings on land under contract of sale has rendered vendor unable to substantially perform contract, vendee is discharged of obligation to pay, 120 C 390 and see VENDOR AND VENDEE
finding that burning of house had brought about substantial failure of consideration equivalent to finding that vendor no longer able to substantially perform, 120 C 390

§ 36. ——Excuses for Nonperformance

contract to build, plaintiff to furnish materials; failure to complete in time is no breach if material be not seasonably furnished, 2 R 5

action on note payable in labor is barred by tender of labor and neglect to provide work, 2 R 53

wilful refusal or absence excuses acts of preparation, where refusal imports a renunciation of such acts, 24 C 637

performance of positive contract, excused only by subsequent illegality, 25 C 535

——act of God no excuse for failure of duty created by the parties, 25 C 536

——aliter, if duty is imposed by law, 25 C 536

literal performance excused when, 40 C 573

when performance is rendered impossible by act of defendant, the plaintiff is entitled to recover what he has lost, or its value, 59 C 283

——there is an implied engagement that the parties will not by acts or omissions prevent fulfilment of, 59 C 287

——or change the circumstances under which alone an agreement can be operative, 59 C 287

obligee cannot take advantage of failure to perform condition precedent caused by himself, 65 C 14, 73 C 47, 144, 80 C 611

inevitable accident, disability of promisor, etc., as excusing nonperformance, 66 C 385

breach of contract to deliver goods not excused by railroad's delay, 81 C 573

cannot take advantage of breach induced by own act; failure to make partial payments promptly, 82 C 383

where one waives performance in time specified, no damages for nonperformance will be given, 82 C 428

nontender of automobile no defense if due to defendant's fault, 83 C 520

one who prevents the exercise of a contract right by injunction, cannot claim it is forfeited, 87 C 528

law does not require performance of useless act, 88 C 60

if performance under bond for deed impossible, no tender or demand by vendee necessary before action, 88 C 64

destruction of property by fire before payment does not release purchaser, 89 C 232

in continuing contract, deliveries need not be continued where prior ones not paid for, 89 C 255

agreement broken after partial performance; plaintiff can cease work and recover damages, 90 C 317

breach of payment in one term as justifying other party in ceasing to perform, 90 C 322

vendor need not tender if vendee will not accept, 90 C 481

no recovery for contract to perform domestic service during employer's life, if servant dies first, 90 C 611

failure to perform, owing to mistaken belief, no excuse, 91 C 332

payment by owner of balance due and taking possession does not relieve builder from proper performance, 91 C 657

where one prevented from performing work, recovery may be had on basis of owner's refusal to allow performance by one ready and willing to perform, 92 C 277, 344

recovery had on implied promise where full performance is prevented by destruction of subject matter, 92 C 278

contract to deliver certain number of quarts of milk not excused by quarantine of farm, 92 C 392

contract to give baby show excused by outbreak of infantile paralysis, 92 C 621

if performance of an absolute contract is dangerous and contrary to public policy, this may be considered an implied qualification and excuse its performance, 92 C 621

where tender of performance is useless, law does not require it, 94 C 589

effect of impossibility of performance of condition subsequent created by change in law, 96 C 187

tender excused in case of absolute refusal by buyer to receive goods if shipped, made during period fixed for delivery, 98 C 414

refusal and inability of one party to perform excuses other from further steps, 98 C 676

party is not bound to proceed with contract the other party is unable to perform, 98 C 730

impossibility or "frustration of contract," as excuse for nonperformance, 100 C 581

contract for delivery of Russian rubles, 100 C 581

——performance not excused by existence of embargo where contract made in contemplation of its existence, 100 C 581

anticipatory breach as excusing other party from preparation to perform, 101 C 504

——upon buyer's definite repudiation, seller not bound to perfect title, 101 C 504

after repudiation, other party need not make futile tender of performance, 103 C 693

debtor cannot escape liability on ground that third party promised him that he would pay bill, 104 C 519

promise to foreclose mortgage on property of bankrupt rendered impossible by refusal of bankruptcy court to permit it, 105 C 539

where promises are mutual and dependent neither party can recover damages for breach without showing tender, notice equivalent to offer to perform or valid excuse, 105 C 657

——substantial claim by other lot owners in tract as to equitable easement growing out

of a uniform development as excuse to one who has agreed to buy lot, 105 C 657
——test of present ability to perform on part of seller not met when power to remove defect depends on consent of third party, 105 C 660
where two carloads out of several bought are refused by buyer, seller not bound to tender others, as it would be futile and merely enhance damages, 106 C 372
impossibility of performing executory contract by event over which neither party has control, 106 C 484
assistance by city to United States government in prosecution of war not ground to claim city prevented performance of contract rendered impossible by war, 106 C 642
impossibility or mistake as excusing compliance with conditions requiring notice of accident and forwarding of pleadings in actions brought against insured, 108 C 652
law does not require tender of performance which other party has made futile, 108 C 652
where defendant agreed with contractor to do part of work, and general contract required consent of engineer to subletting, default of defendant before performance relieved plaintiff of necessity of seeking that consent, 110 C 240
where owner of land refuses to make payment of instalments under contract, this amounts to repudiation, 115 C 40
——contractor excused from further performance, 115 C 40
where parties enter indivisible undertaking and one performs less than the whole, he cannot insist on performance by other, 116 C 660
——at most can claim only compensation for benefit conferred on other, 116 C 660
burning of buildings on land under contract of sale, 120 C 390
where wife without her fault is prevented by husband from performing her part of marital contract, she may treat it as rescinded and recover quantum meruit, 123 C 88

§ 37. ——Anticipatory Breach; Repudiation; Prevention of Performance

prevention by promisee is equivalent to performance by promisor, 2 C 497, 9 C 569
failure to perform caused by party to be benefited is equivalent to performance, 9 C 568
sale; part payment; sale to other parties is a repudiation of first sale, 35 C 387
absolute refusal by one party to carry out his part of contract is equivalent to an abandonment, 54 C 328
——gives other party right to rescind and recover back the money paid by him, 54 C 328
where promisee disables itself to perform after receipt of premiums, action lies to recover premiums or for breach of contract, 64 C 170
breach by anticipation, 76 C 27, 86 C 494, 88 C 130, 90 C 286, 91 C 197, 94 C 88
remedies and damages where promisee prevents performance, 80 C 134
one wrongfully prevented from completing contract may recover for work done, 81 C 615
no action on oral agreement to leave all property to A in consideration of support; at death, action lies for value of support rendered, 83 C 34
——execution of will in favor of another unknown to one who had promise to give support, is not repudiation of promise, 83 C 34
contractor can recover for loss where owner wrongfully prevents him from completing work, 84 C 555
application by owner to commission to change plan of work so contractor could not comply with contract creates liability, 84 C 558
notification of cancellation before performance is a breach, 85 C 143
defendant cannot say contract not performed if failure is due to his act, 85 C 383
on repudiation of joint land venture, other party may sue to recover, once for all, all damages sustained, including loss of profits accrued and prospective, 86 C 453
executory contract not ended by repudiation of one party without the acquiescence of the other, 86 C 494
——manufacturer cannot recover cost of goods made after notice of buyer's repudiation; but he can recover profits that would have resulted had contract been fully performed, 86 C 494
one party prevented by the other from completing contract may treat it as rescinded and recover the reasonable value of work and labor done or sue for damages for the breach, 87 C 41
refusal of landlord to perform covenants is attempted repudiation, 87 C 400
vendor need not wait expiration of period fixed for delivery of goods where vendee has unqualifiedly repudiated contract; may treat it as anticipatory breach, 88 C 130
remedy of one prevented by wrongful act of other party from completing contract partly performed, 91 C 297
recovery on basis of owner's preventing performance, 92 C 277
preventing employee who is ready and willing to perform gives right of action, 92 C 344
unequivocal refusal to perform contract unless other party permits a modification, is a breach; no tender necessary, 92 C 569
no anticipatory breach of contract without acquiescence of the other party, 94 C 80

rights where only one party attempts anticipatory breach, 94 C 89
wrongful prevention of fulfilling contract entitles one to recover profits, 94 C 687
where owner repudiates building contract, action lies for work performed or for breach of contract, 97 C 92
——damages in latter case, 97 C 92
refusal to accept goods not yet deliverable gives no right of action unless seller signifies intent to treat it as repudiation, 98 C 414
absolute refusal by buyer to receive goods even if shipped, made during period fixed for delivery, is a breach, 98 C 414
——tender is excused in such a case, 98 C 414
——subsequent effort by buyer to have seller accept of no consequence, 98 C 414
effect of buyer's failure to carry out a merely auxiliary provision, *held* not to be repudiation, 98 C 674
breach of an executory contract by one party only, can occur only after time for performance has arrived, 98 C 675
until buyer discloses unequivocal intent to repudiate contract seller not put to option to determine whether to accept it, 98 C 689
——notice by buyer who is to get goods that he will not do so, not acquiesced in by seller, not breach before delivery time, 98 C 689
——buyer might still take goods, 98 C 698
conduct *held* not to show abandonment or anticipatory breach, 101 C 208
purchaser of uncompleted dwelling-house may finish it at seller's expense, where latter repudiates contract, 101 C 323
anticipatory breach as excusing other party from preparations to perform, 101 C 504
——upon buyer's definite repudiation, seller not bound to perfect title, 101 C 504
——finding that seller ready, willing and able to perform was reasonable though title not perfected, 101 C 504
when wrongfully prevented from completing contract, contractor may recover reasonable value, 101 C 658
——lien lies for contract price less cost for finishing work, 101 C 658
a breach may consist in failure to give party opportunity to perform services for which other had agreed to pay him, 102 C 287
——as soon as other denies that opportunity promisee can declare contract at an end, 102 C 291
——effect of such an election, 102 C 296
repudiation of partially performed contract gives seller option to accept renunciation and sue or to tender full performance and to sue for nonacceptance of goods, 103 C 172
——in latter case no issue is raised as to seller being ready and able to perform but question is, did he properly tender performance, 103 C 172
——where buyer requests postponement of deliveries contracted to be made weekly but finally repudiates balance of contract seller may tender goods within a reasonable time thereafter, 103 C 172
after repudiation of contract, seller need not tender balance of goods, 106 C 372
right of purchaser to recover for repairs and improvements made under void contract or under executory contract when performance prevented by seller, 106 C 484
where agreement was made to divide profits from real estate development and formation of corporation prevented determination of such profits, action lies for prevention of performance, 113 C 449
where owner of land refuses to make payment of instalments under contract, this amounts to repudiation, 115 C 40
——contractor entitled to recover for work done, 115 C 40
anticipatory breach of executory contract, occurs only where there is distinct, unequivocal and absolute refusal to perform, 116 C 582
——renunciation must be so distinct that its purpose is manifest and so absolute that intent no longer to abide by contract is beyond question, 116 C 582
inference of probable future breach cannot be used as equivalent of present, absolute, unequivocal renunciation of contract, 116 C 582
letters stating that corporate existence of vendee was being terminated, etc., *held* not renunciation of obligation to give orders for shipping materials contracted for, 116 C 582
——and clause as to uncertainty of time of payment not repudiation of obligation to pay within thirty days, 116 C 582
——inference of ultimate breach could not be drawn, 116 C 582
——no right in vendor to rescind and sue for damages or to treat contract as still existing, tender performance, and sue for purchase price, 116 C 582
where architect was to receive fee based on accepted purchase price of work and owner repudiated contract, he was entitled to recover reasonable value of service rendered, 116 C 688
anticipatory repudiation must consist in distinct and unequivocal absolute refusal to perform promise, 117 C 320
——intent to repudiate contract from letter which could rest only on inference, not sufficient, 117 C 320
positive statement to promisee that promisor will not perform his contract constitutes anticipatory repudiation, 120 C 315

——except in cases where contract is originally unilateral and not conditional on some future performance by promisee, 120 C 315
——or of a contract originally bilateral that has become unilateral and similarly unconditional by full performance by one party, 120 C 315
——such as in case of a lease, which is performed by lessor when he executes it, 120 C 319
covenant to pay rent at certain fixed periods is in nature of instalment contract, 120 C 320
——failure to pay any instalment as it falls due constitutes partial breach, 120 C 320
——but when such partial breach is accompanied or followed by repudiation of entire contract, promisee may treat it as total breach, 120 C 320
——and has immediate action to recover damages which would naturally flow from such a breach, 120 C 320
——this recovery is independent of the principles of anticipatory breach, 120 C 319
express repudiation by town of obligation to use truck constituted actionable breach of the contract and entitled plaintiff to treat it as ended and sue for money he would otherwise have realized, 121 C 291
appointment of receiver and his failure to adopt contract executory in whole or in part at that time, will ordinarily operate as anticipatory breach and entitle other party to present his claim for damages, 123 C 74
——but doctrine of anticipatory breach not extended to unilateral contracts unless promisor's duty is conditional on some future performance by promisee, 123 C 74
repudiation of lease by receiver of lessee at time when no rent was due did not constitute anticipatory breach, 123 C 74
——claim for total breach not provable in receivership, though where rent became due there was present partial breach accompanied by repudiation of lease, 123 C 74
——though landlord might have treated it as total breach in action against tenant, 123 C 74
——lessor not entitled to instalment, since it was not obligation in existence at date of receiver's appointment, 123 C 74
contract providing for payments by husband and duties to be performed by wife requires as condition of enforcement or redress, readiness and willingness to perform on part of complainant or excuse for their absence, 123 C 88
——if wife without her fault is prevented by husband from performing, she may treat contract as rescinded and recover quantum meruit, or she may sue for damages for the breach, 123 C 88
where attorney employed on contingent basis, question discussed whether there is implied term of contract that he will have reasonable opportunity to perform and if he is prevented by wrongful discharge contract is broken and he can recover what he probably would have earned, 128 C 228
——minority rule adopted here, that he should only receive reasonable compensation for work done up to time of discharge, 128 C 230

§ 38. ——Waiver

acceptance of unfinished work and an allowance on contract price is not a waiver of claim for damages for failure to complete, 28 C 490
acceptance of work, where contract is only partially performed, presumed; amounts to waiver of objections to goods, 29 C 413
waiver of failure to perform by placing refusal of tender on other grounds, 67 C 585
waiver of condition precedent as to approval of architect by making issue solely on nonperformance, 69 C 228
vendor's acceptance of belated payments by vendee, a waiver of right to claim a forfeiture, 87 C 293
owner of building under construction may waive compliance with provision that architect shall decide on claims of contractor, 89 C 172
one not estopped from claiming breach by making instalment payments after a default if made under a misconception, 93 C 203
vendee's acceptance of one instalment does not compel acceptance of others which do not comply with terms of contract, 93 C 671
acceptance of goods without questioning weight where promptness was important does not waive claim for damages, 94 C 311
failure to establish credit for executory purchase as agreed is breach of mere auxiliary term for seller's benefit, 98 C 666
——not waived though no advantage taken for three or four months, at least where there is no unequivocal refusal to open it, 98 C 666
promisor cannot waive performance of condition precedent though designed in his favor, 102 C 202
party entitled to demand it, may waive performance of condition precedent, 103 C 624
acceptance of royalties from quarry on land as waiving right to damages for past violations of restriction as to it, 115 C 70
——is not a waiver of right to prevent future violations, 115 C 70
——purchaser of land buying with intent to enforce restriction can do so, 115 C 70

waiver as applied to provisions in insurance policy works a change in contractual rights and cannot be based on facts not known to the party claiming it, 127 C 697

§ 39. Quasi and Implied Contracts

§ 40. ——In General; Miscellaneous Cases

implied contract defined, 59 C 533

——neither a statute, nor a rule of law, alone, raises an implied promise, 59 C 533

——there must be a consideration outside of and in addition to the statute or rule, 59 C 533

——and the promise is implied rather from the consideration than from the statute, 59 C 533

when implied contract arises, in general, 67 C 425, 68 C 250

implied contract excludes possibility of express, 68 C 252

consideration necessary, 70 C 544

on allegation of express contract no recovery can be had on theory of implied contract, 70 C 51, 72 C 167

evidence of express agreement admissible, 75 C 467, 80 C 19

no implied contract to pay debt of third party, 82 C 178

no implied promise in case of voluntary courtesy moved by request, 82 C 178

corporation may be bound by implied contract in same manner as individual, 82 C 281, 87 C 1

action after death on oral agreement to leave property at death in consideration of support; but not before death, 83 C 34

——such agreement admissible to show expectation of recompense, 83 C 34

use of savings bank book raises implied contract with bank, 85 C 225

tax is not implied contract, 85 C 376

municipal corporation liable for work though ultra vires, 87 C 261

no implied promise to pay for half of a wall if one had no interest in property and believed work to be at expense of builder, 88 C 220

no promise to pay implied from one with no interest, 88 C 220

quasi-contract is no contract at all as in case of sheriff's salary arising from statute, 89 C 683

can recover difference between contract and lowest market price plus expenses of seller where one has refused article on which he has made a deposit, 91 C 26

recovery had on joint undertaking where goods unsatisfactory, 92 C 230

creditor accepting time note for merchandising account agrees to extension, 92 C 262

assumpsit lies to recover profits made by real estate broker who buys himself through dummy and resells, 99 C 366

one may recover money retained by another against equity and good conscience, 105 C 539

where plaintiff and defendant contributed to purchase mortgage on property of plaintiff's husband, who was bankrupt, she was entitled to proportionate share of rents collected by defendant as mortgagee, 105 C 539

equitable basis of action on quantum meruit, 106 C 484

distinction between implied contracts and quasi-contracts, 107 C 691

duty to deliver goods within reasonable time is implied contract of common carrier, 109 C 466

implied contract can only exist where there is no express one, 111 C 299

——true implied contract exists in absence of express one and is inferred from conduct, 111 C 304

where debtor gives note for debt payable at future time an agreement is implied to forbear to sue on the original debt during term of note, 114 C 94

——where collateral security is given for debt, quaere, 114 C 94

common-law liability of tenant holding over was one by implication and enforceable as quasi-contract, 115 C 286

mere consent of vendor of land that vendee may start work before title passes does not create implied contract that work shall be started, 115 C 357

out of making application there cannot arise implied contract on part of insurer to act upon it within reasonable time, with correlative duty to deal with it with reasonable care, either itself or through its agent, 116 C 526

——such implied promise must have consideration, 116 C 526

——in instant case no detriment to applicant contemplated by terms of offer or acceptance, 116 C 526

——and $5 paid agent not consideration because ownership of it did not pass to company, 116 C 526

whether receipt of part of premium by company might create obligation on its part to act on application within reasonable time, quaere, 116 C 526

——in instant case pleadings not adapted to relief on that basis, 116 C 526

——and finding was that company acted within reasonable time after receipt of application, 116 C 526

where contract is indivisible and one party performs less than whole obligation, he can at most claim compensation only for benefit conferred on other, 116 C 660

when there is conveyance of real property for particular purpose, when purpose has been

fulfilled or frustrated, law presumes agreement on part of grantee to reconvey to grantor, 117 C 58

defendant by conduct beyond scope of agency received goods from plaintiff which he appropriated to use of another; *held* he was liable in quasi-contract for their reasonable value, 117 C 659

action *held* to be one for recovery of rents actually received by cotenant under implied agreement that he should manage the common property, 118 C 12

where debtor gave creditor statement of running account between them, containing item not properly chargeable, with check, stating that its indorsement was acceptance in full payment, plaintiff may recover item though he indorsed and deposited check in ignorance of mistake, 118 C 68

where owner of tract makes map showing streets and sells lots referring to map, lot owners have right to have streets kept open, upon principle of estoppel or implied contract, 118 C 187

distinction permitting recovery in nature of restoration of property, or for money paid, services rendered, etc., by way of part performance, but precluding damages for breach, is that former is based on implied contract, latter upon express agreement within Statute of Frauds, 122 C 511

ordinarily law will not imply a promise when there is an express one, 124 C 251

where acceleration clause gave mortgagees option to declare entire debt due in case of default in payment of insurance premiums, *held* there was implied agreement to carry sufficient insurance to protect mortgagee's interest, 124 C 333

part payment as tolling Statute of Limitations; law implies promise to pay balance, 125 C 196

where elements necessary to give rise to implied contract lacking, only basis for recovery on retrial was that plaintiff, mistakenly believing it was acting under a contract, performed services from which benefit accrued to defendant, 127 C 680

facts did not support claim that K impliedly warranted that he was agent of company and authorized to state that company would guarantee purchaser of its stock against loss, 128 C 52

——no contract between K and purchaser of stock to which such implied warranty could attach, 128 C 52

where attorney directed officer to attach property and on replevin by conditional vendor directed him to refuse to surrender it, there was legal inference of promise by attorney to reimburse officer for loss, 128 C 420

§ 41. ——Goods, Services and Expenditures

where son remained at home and performed services for father on general expectation of compensation in will, if father does in fact make such provision, son is bound by it, whether satisfactory or not, 53 C 365

where services have been rendered in pursuance of an agreement that compensation should be made by will, but no such provision is made, *held* party rendering services has a claim against estate as creditor, 61 C 203

an oral promise to leave property by will in consideration of companionship and society is within Statute of Frauds, if property consists of real estate in whole or in part, 63 C 538

——fact that promisee has acted upon terms of promise does not relieve, as part performance, 63 C 539

——if promisee has rendered services in reliance on such promise, he may recover the value of such services on quantum meruit, 63 C 543–545

action by physician; unskillfulness matter of defense; value of services, how determined, 64 C 464

action to recover for services under promise of marriage; relations of parties while plaintiff still the wife of another is admissible, 69 C 652

recovery on quantum meruit where default is made in special contract, 70 C 583, 74 C 418, 80 C 134

——where contract is rescinded, 78 C 459

——where promisee prevents performance, 80 C 134

in action for services rendered deceased relative, evidence of request made sixteen years before death and that deceased possessed competence is admissible, 79 C 664

claims for support of near relative must be clearly proved; "providing a home for, care and support of A" sufficient statement; claim for services covering twenty years, 80 C 19

where work is to be performed under requirements of statute, performance in disregard of them gives no right to recover, 80 C 383

providing supports to buildings on neighboring land, 82 C 126

furnishing materials, with knowledge of another, whose duty it was to furnish them, 82 C 130

acceptance of services implies promise to pay except in case of a family, 82 C 331, 92 C 306

no implied promise to pay for extras ordered on building unless engineer authorizes them, 82 C 484

no implied promise to pay for services rendered without expectation of payment, 82 C 500
leaving a legacy combats implied promise to pay for services, 82 C 504
to recover for services they must have been requested or expected to be paid for, 82 C 547
in suit for services rendered deceased, statements of deceased as to value of his property received, 82 C 647
no recovery for architect who draws plans for building to cost in excess of that ordered, 83 C 40
plaintiff can recover reasonable value in action for agreed price, 83 C 65
when action justified for recovery of "extras" under written contract; "extras" defined, 83 C 442, 444, 85 C 592
assumpsit where work is accepted though not according to contract, 85 C 180
where services rendered in belief that they will be paid for, and this is known by other party, compensation may be recovered, 85 C 504, 88 C 224
where services rendered to corporation under circumstances raising presumption of payment therefor, 87 C 1
municipal corporation may be liable on implied contract, 87 C 261
no action by city for services of fireman at theatre, 87 C 412
in action for work done and material furnished at an agreed price, their reasonable value may be recovered, 89 C 254
——where agreed price cannot be proved, 89 C 254
where agreement is to pay by will and employee dies before employer, 90 C 615
contract admissible to show expectation of payment, 90 C 615
special agreement made after employment is a matter of avoidance in action for value of services, 92 C 256
when corporation liable for services performed in its organization, 92 C 266
——for issuance and acceptance of stock receipt, 92 C 266
recovery by contractor where building partly burned before completion and abandoned, 92 C 278
if son lived with parent and contributed services and money, they are presumed to be gratuitous, 92 C 306
if more copper used to fill order than that agreed on, must pay what it is reasonably worth or market value, 94 C 311
though expectation of payment by tipping exists as to both parties, still no contract arises, 94 C 490
action lies to recover for services rendered deceased on his promise not to make will, 96 C 383
——function of promise in such a case is to rebut presumption that services were intended to be gratuitous and to prevent Statute of Limitations applying, 96 C 383
——charge in case of services rendered by daughter, approved, 96 C 383
——interest properly allowed, 96 C 384
——statements of testator admissible, 96 C 384
quantum meruit lies for work already done when building contract is rescinded, 97 C 94
where issue was whether wife of farm superintendent performed services as incidental to contract with him under circumstances entitling her to compensation, 97 C 175
mere request to physician to perform services does not impose liability to pay for them, 97 C 504
——must be express promise or circumstances giving rise to implied one, 97 C 504
ordinarily the receipt of goods implies an obligation to pay for them, 99 C 150
right of physician to recover for services rendered child run into by defendant where latter promises to pay for them, 99 C 161
——performance of services as a valuable consideration, 99 C 161
——defendant's undertaking original, not collateral, and so not within Statute of Frauds, 99 C 161
——action lies on common counts and plaintiff can recover reasonable value of services, 99 C 161
where A sells business to B who assumes A's debts, quaere whether plainitff could sue B for unpaid price of goods sold to A and included in transfer to B, 100 C 45
corporation liable for reasonable value of truck body accepted by it and sold, 100 C 314
——even though ordered without its authority, where it knew it was expected by the builder to pay, 100 C 314
plaintiff may recover reasonable value of services performed under unenforceable contract to bequeath in consideration of services, 101 C 54
——but not where he relies entirely on express contract, 101 C 54
purchaser of uncompleted dwelling-house may finish it at seller's expense, where latter repudiates contract, 101 C 323
when wrongfully prevented from completing contract, contractor may recover reasonable value, even though contract be indivisible, 101 C 658
no implied contract found proven that decedent pay plaintiff for personal services, in addition to board and room, 101 C 752
where plaintiff justified by acts of defendant in expecting compensation and renders services in expectation that it would be

paid, in which defendant shared, recovery proper, 102 C 148
recovery by broker of full commission where he sets in train circumstances leading to sale, owner learns of it and indicates expectation to pay commission but himself concludes deal, 102 C 148
promise to pay for both past and future services will be sustained as to both, if latter are performed, 102 C 150
to recover reasonable value, building contractor must substantially perform, 102 C 152
no implied promise to pay for materials furnished, unless circumstances reasonably indicate both parties expected payment, 102 C 243
mere charge upon account book not sufficient to support implied promise where all other circumstances show work done as gift, 102 C 243
casual estimate by contractor no evidence of reasonable value, 102 C 243
owner not liable for work done by subcontractor as favor to general contractor, 102 C 243
claim for care and services must be based upon mutual understanding or agreement for compensation, 102 C 331
——to be carefully scrutinized when based upon alleged statements by decedent, 102 C 331
in action for care and services rendered decedent, evidence of unfriendly relations between him and another brother, inadmissible, 102 C 331
in action on claim for services to decedent statements made by him should be carefully analyzed to see that they were not merely expressions of generous intent, 102 C 331
——promise of decedent to claimants who had left him to leave them his estate if they would return negatives his intent to pay for earlier services, 102 C 331
liability of husband for wife's necessaries at common law, under statute, and upon express promise, defined and explained, 102 C 703
no recovery between husband and wife for care and services rendered in sickness, 103 C 431
extras may be recovered for, despite fatal variance between allegations and proof as to contract, 103 C 492
when city is obliged to pay compensation not expressly authorized and where there is no express provision for it, 104 C 2
——acceptance of services alone not enough, 104 C 2
in suit against husband for funeral expenses of wife, promise by daughter to him to pay is no defense, 104 C 519
——primary liability of assets of her estate should be considered, 104 C 519
ordinarily furnishing goods in regular course of business justifies inference of mutual expectation of payment, 104 C 519
where contract of sale of land provided for possession, repairs and improvements of land by vendee, pending securing of federal land bank mortgage, and this proved impossible, and vendee continued in possession pending securing of another mortgage, which vendor finally prevented, vendee entitled to recover for repairs and improvements, 106 C 484
doctrine of unjust enrichment a vague one, 106 C 498
——where neither party contemplated payment for services, law will not imply obligation, 106 C 498
recovery on quantum meruit for services rendered to deceased person, 106 C 511
where case is tried solely on theory of promise to pay for services to decedent, error cannot be predicated on failure to charge as to implied obligation, 106 C 511
where plaintiff incurred expense in altering a dwelling-house under a void contract of sale, he may recover that expense less any benefit accruing to him, 107 C 181
——but not expense of repairs made necessary to effect sale to third party, 107 C 181
recovery where contract unenforceable usually based on benefit to defendant from performance, 107 C 181
——as improvements by vendee under oral contract or one honestly believing he owns land or where there has been substantial performance of contract, 107 C 181
——but benefit not of controlling effect where plaintiff performed services in honest belief that there was a valid contract and in mutual expectation of compensation, 107 C 181
——as prevention of performance of contract by defendant, 107 C 181
——or rescission during performance or building being constructed is burned or promise is made to compensate by will or inheritance, or as in instant case, 107 C 181
underlying principle is that one is to do that which in equity and good conscience he should do, 107 C 188
implied and quasi-contract distinguished, 107 C 691
——ordinarily where parties are strangers, requested rendition of valuable services by one and acceptance by other shows mutual expectation of compensation, 107 C 691
——elderly lady requesting nurse to spend nights at her house and perform other services; statement that nurse "would be taken care of," 107 C 691

——where claim made against estate for services, should be clear and satisfactory proof of agreement that they were to be paid for, 107 C 696

one who abandons contract without justification not entitled to reasonable value of work done unless other party accepts benefits under circumstances raising implied promise to pay, 108 C 186

——does not apply where work is done on land such that it could not well be returned, 108 C 186

——abandonment of contract to build concrete walk after excavation made, 108 C 186

right to recover expenditures upon property made by one relying upon supposed agreement of purchase where they have enriched property, 108 C 683

——so where expenditures are made or services rendered at request or with acquiescence of seller in expectation of compensation, 108 C 683

——but expense of employing architect and getting estimates for improvement of property by buyer, securing loan for resale, etc., *held* not recoverable, 108 C 683

implied contract to pay for rendition of services arises where person rendering them expects compensation and other intends it or ought to know compensation is expected, 109 C 507

——where rendered in ordinary course of business presumption that compensation intended, 109 C 507

——where physician was on terms of confidence and trust with deceased and rendered no bill for years, whether entitled to recover question for jury, 109 C 507

——charge making right to recover depend on intention of patient to pay, disregarding existence of facts reasonably indicating intention of physician to charge *held* error, 109 C 507

claims for services rendered to decedent to be scrutinized with care, 109 C 507

——rule not restricted to services rendered relatives, 109 C 507

where charges begin on basis of separate charge for each visit by physician, basis cannot be changed to use of lump charge for each year without party's consent, 109 C 515

where work done on land without authority, benefits cannot ordinarily be returned and intention will not give rise to obligation to pay, 109 C 700

——but rule is otherwise where there is an opportunity to accept or reject work, 109 C 700

school liable for unauthorized sanitary improvements where it used them, though it might have used old equipment as before, 109 C 700

on issue of rendition of services with expectation of payment, unexecuted will in favor of claimant and statements as to paying him and making will admissible, 110 C 217

cotenant may recover contribution for expenditures on common property in assumpsit, 110 C 651

implied contract arises where without request services are rendered under circumstances indicating an intent to pay for them, and are accepted with knowledge of the circumstances, 111 C 299

disaffirmance of contract by minor; compensation, 112 C 459

in suit by employee for services, attorney's draft of will not signed or approved by deceased *held* inadmissible as privileged, 112 C 521

where one is entitled to take possession of property, no obligation to pay for improvements can be implied where they constitute a benefit inseparable from possession, 113 C 349

where only reasonable interpretation of request for services by trustee is that he is acting in trust capacity, no basis to charge him personally, 113 C 445

no basis in pleadings for judgment for reasonable value of coal claimed to have been sold at agreed price, 114 C 422

where plaintiff had contract to make certain repairs and proceeded with other repairs without knowledge of defendant, latter not liable, 114 C 721

——where repairs were to boiler which could not be used without taking advantage of them, such use affords no basis of recovery, 114 C 721

value of services performed for decedent cannot be proved by value of land he promised to devise in payment, 115 C 208

one who has rendered services under an agreement to receive compensation by devise of land, unenforceable because of Statute of Frauds, may maintain an action for the services rendered, 116 C 108

intestate promised to devise plaintiff life use of real estate in return for services but will gave her a less amount without explanation; *held* the gift was not intended as satisfaction for services and verdict for plaintiff should have stood, 116 C 108

where defendant repudiated contract by which she engaged architects in connection with remodeling house, latter were entitled to recover at least the reasonable value of their services, 116 C 688

owner of boat not liable for extra work, in addition to tuning motor, which he did not request, 118 C 322

——nor on theory that he voluntarily accepted benefits, as he was obliged to do so if he was to use boat, 118 C 322

finding by referee that subcontractor entitled to allowance for extra services in plastering contract, not reasonably indicated on plans submitted to him on which he based his bid, sustained, 118 C 325

——amount thereof reasonably found, and interest properly allowed from date of writ, 118 C 325

where attorney procures from ignorant client a mortgage to ensure payment of fees and mortgage is judicially declared invalid, no actual fraud being shown, he can recover on quantum meruit for value of services, 119 C 251

——$10,000 award sustained for defense in murder trial and services in civil suits, 119 C 251

——similar rule where original contract for services void as against public policy, 119 C 257

indefinite employment may be terminated at will and hiring gives rise to no contractual obligation aside from right to compensation for services actually performed, 120 C 66

obligation of true owner to compensate occupant for expenditures on land made under honest belief that he had title, does not arise from implied contract, 120 C 533

in absence of express employment, broker's right to commission for sale rests on rendition of services with expectation that seller will pay and acceptance by seller knowing of this expectation, 121 C 68

quantum meruit for services rendered decedent; oral agreement to pay by legacy, 121 C 97

where wife without her fault is prevented by husband from performing her part of marital contract, she may treat it as rescinded and recover quantum meruit, 123 C 88

one of four sons remained on farm and made improvements on it in mistaken belief that property would become his on death of mother, 123 C 687

——essence of right of recovery that improvements have added to value of property, 123 C 687

——where no evidence offered as to this, only evidence being original cost of improvements, no basis for recovery, 123 C 688

pleadings in action to recover for services rendered decedent, 124 C 43

statute making both husband and wife liable when article purchased by either shall have gone to support of family or for joint benefit of both renders them liable by raising implied promise from use of goods, 124 C 251

wife's right to sue husband for expenditures for support of family arises out of quasi-contract, 124 C 543

in action for breach of express contract, there can be no recovery for reasonable value of services rendered unless there is evidence of what that value was, 125 C 10

where plaintiff furnished services and materials on property at A's request and on her credit he cannot recover from owner of property though latter was benefited; no mistake or unjust enrichment, 126 C 712

implied contract arises if one renders services at request of another under expectation that they were to be paid for and if latter intended to pay or should have known that other party expected payment, 127 C 615

——conclusion that services and materials were furnished by plaintiff to defendant under circumstances which did imply promise to pay reasonable value justified, 127 C 613

——contract by the defendant and third party of which plaintiff knew nothing had no bearing upon issue, 127 C 616

services performed by husband on wife's property *held* not to entitle him to compensation, 128 C 247

broker is entitled to commission if he rendered services in expectation defendant would pay for them and latter knew or as reasonable man should have known this in accepting them, 129 C 172

§ 42. ——Money Paid; Unjust Enrichment

administrator de bonis non may recover excess where overpayment was made by mistake, though defendant had no knowledge of mistake or condition of estate, and mistake was one of law, 59 C 321

——so where claim was paid in full and estate afterwards proved insolvent, 59 C 321

negligence is no defense to recovery of money paid by mistake of law or fact, if no harm is caused to the defendant, 59 C 321

——especially where party making payment acts in a fiduciary capacity, 59 C 321

recovery of money which ought in good conscience to be paid over, 68 C 204, 80 C 92, 82 C 383, 90 C 647

——where premium is paid to insurance company in good faith and under inducement of company, 69 C 503

recovery of money paid or received and used under mistake of fact, 71 C 206, 74 C 689

——not recoverable, if paid voluntarily and with knowledge, 78 C 675

——if paid by volunteer to protect his own interest, 77 C 575

liability of one who receives money paid for certain purpose not intending so to apply it, 73 C 405

money paid voluntarily with knowledge of facts, though under mistake of legal liability, cannot be recovered, 82 C 227
assumpsit for money paid for purpose not carried out, 83 C 641
assumpsit for money paid by mistake; negligence of plaintiff no defense, 83 C 462
though grantee assumes taxes, where grantor in fact receives money for them, successor of grantee who is obliged to pay them may recover of original grantor, 84 C 177
corporation liable for money had and received if organization not completed, 88 C 239
money had and received lies where money is equitably due, 90 C 647
can recover without demand money held to pay precedent debt, 90 C 647
can recover money paid in prize contest that is a fraud on other contestants, 91 C 372
recovery of insurance money paid through mistake on insurance policy, 92 C 1
where one pays money for another which he is bound to repay, 92 C 309
money paid by mistake and in good conscience should not be retained, 92 C 667
no recovery for payment of forged note if debt it represents is outstanding, 92 C 667
recovery of ultra vires loan by corporation, 93 C 136
when one could not in equity retain money paid for worthless goods, 94 C 311
where bank discounts draft with bill of lading attached, and knows of seller's default in agreement of sale, it may be liable to buyer for money it received, 95 C 300
law is solicitous to prevent one from enriching himself at expense of another who has paid latter's obligations, 96 C 642
——where tobacco jointly owned is sold to L who pays one-half to each owner but is entitled to refund, and one owner pays it, he can recover from other, 96 C 642
overpayment of claim voluntarily made, and in absence of dishonesty on part of payee, is not recoverable, 97 C 129
mistake necessarily involves erroneous belief that money was legally due, 97 C 131
——elements of action for money paid by mistake, 97 C 131
where stockholder of record receives dividend after transfer of stock, but before its record, 97 C 372
one who holds money which he ought in equity and good conscience to pay to another is under a legal duty to do so, 97 C 372
obligation of one who has secured money by undue influence to return it, 98 C 201
money recoverable if paid under a mistake, whether of law or fact, 98 C 480
——provided payor was not bound legally or morally to pay, and payee has no right in good conscience to retain money, 98 C 480
right to recover money which owner is not equitably and in good conscience entitled to retain, 98 C 722
——money advanced to enable defendant to carry out contract, 98 C 727
right to recover illegal tax paid, 101 C 391
if parties have equal knowledge, act in good faith, and money is paid voluntarily under a possible, though erroneous, construction of written instrument, there can be no recovery, 102 C 255
essential elements of action to recover money paid under mistake, either of fact or of law, 103 C 249, 105 C 315
if action to recover money paid is brought in reasonable time after mistake is discovered, this is sufficient, 103 C 249
——unless other party has changed his position to his injury or equitable rights have intervened, 103 C 249
——if plaintiff acted under mistake, was under no legal or moral obligations to make payment, and defendant cannot in good conscience keep money, it is recoverable, 103 C 249
——whether mistake was of law or fact immaterial, 103 C 249
——recovery of illegal tax, 103 C 249
——nature of action to recover money paid by mistake, 103 C 261
town may vote to pay back agent of school fund who made payment to town under mistaken belief of law as to his liability, 105 C 315
contract by corporation to sell stock which it has no power to issue, is void; purchaser entitled to return of consideration, 106 C 41
a mere volunteer cannot recover payment made by him, 106 C 339
voluntary payment made with full knowledge cannot be recovered back, 108 C 47
——payment of amount plaintiff estimated would be found due for tax on appeal from board of relief, though too large, cannot be recovered, 108 C 47
——this not a case of mistake, 108 C 50
payment to avoid interest is not voluntary, 108 C 47
elements necessary to state in complaint to recover deposit on purchase price where contract is unenforceable within Statute of Frauds, 108 C 683
implied contract obliges principal to reimburse surety when latter has paid the debt, 110 C 221
where one has money which in equity and good conscience he should not retain from another, 110 C 229
——same principle justifies recovery where one has paid money which another was under a primary duty to pay, 110 C 229

right of one of two jointly and severally bound to recover proper portion of amount he has been called upon to pay, 110 C 342
——right does not exist until payment has been made and this was not voluntary, 110 C 342
——but latter requirement is met if payment was demanded and could have been compelled, 110 C 342
right to recover money paid in ignorance of rights and under mistake, 110 C 417
——excess charges made by electric power company through failure to combine charges for different meters in one bill, as it did with others, 110 C 417
money had and received is equitable action to recover back money paid by mistake by one having no obligation to pay it to one who has no right to retain it, 110 C 417
rules as to recovery of money paid under mistake, 115 C 554
payment of tax not made under mistake, fraud or duress or under protest cannot be recovered back under claim that act was invalid, 115 C 554
incumbrancer entitled to judgment against property owner for money wrongfully paid latter by city, as money had and received, 116 C 601
when property owner may recover excess payment of taxes due to mistake, 117 C 388
where debtor gave creditor statement of running account between them, containing item not properly chargeable, with check, stating that its indorsement was acceptance in full payment, plaintiff may recover item though he indorsed and deposited check in ignorance of mistake, 118 C 68
basis of recovery of money paid under mistake is unconscionable advantage which would otherwise be secured, 123 C 366
doctrine of unjust enrichment available whether payment made under mistake of fact or law, 123 C 576
principle that condition precedent to recovery of money paid by mistake is finding that receiver ought not in good conscience to retain it not applicable in suit by bank which pays checks to presenting bank on forged indorsement of payee's name, 123 C 617
where plaintiff furnished services and materials on property at A's request and on her credit he cannot recover from owner of property though latter was benefited; no mistake or unjust enrichment, 126 C 712
where A was deeded vacant lot, parties believing deed conveyed him adjacent lot with house on it, and gave back mortgage, there was clear case of mutual mistake and he was entitled to cancellation and money back, 129 C 20
where person built on wrong lot by mistake he might have claim for amount by which its value was enchanced against owner of tract or successor, 129 C 24

§ 43. Actions

See also CONFLICT OF LAWS § 2

§ 44. ——In General

contract to distill, keep account, and deliver part on demand; *held* no action lies until full time has elapsed, 3 D 289
when party may sue where there are mutual and concurrent acts, 14 C 485
recovery for part performance when contract is divisible, 26 C 177
where deviation from special contract is not wilful and the party has received the benefit, contractor may recover for labor and material furnished, 55 C 187
——but diminution in value by reason of deviations from contract may be deducted from contract price, 55 C 188
agreement not to practice dentistry within ten miles of certain city or forfeit $1000; *held* injunction would not lie to restrain violation of contract, 62 C 367
——plaintiff left to an action at law to recover forfeit as liquidated damages, 62 C 368
——does not effect that defendant was insolvent, 62 C 370
remedies where contract provides for bond for performance and liquidated damages, 79 C 482
no recovery for work done on highway without contract or bond as provided by statute, 81 C 615
when written contract may be put to the jury; plaintiff nonsuited where no written evidence produced, 82 C 294
whether entering contract induced by fraud gives election of remedies, 82 C 624
if contract is within Statute of Frauds, recovery had on basis of quantum meruit, 82 C 648
default in payment of instalments gives separate actions, 83 C 31
no cause of action until death in agreement to pay by will, 83 C 35
if joint contract to convey land is not enforceable against all, it is not enforceable against one, 83 C 127
if work not completed as alleged, cannot recover for work and labor on special contract, 83 C 308
discharged employee need not seek other employment; can sue at once, 85 C 422
one must give notice he claims compensation for extra work performed as soon as he does such work, 85 C 586
overpayment induced by fraud; what remedies are available to defrauded party, 86 C 481
right of action for buyer's breach accrues at date of breach, 86 C 495

money recoverable from bank for draft paid even though action lies also against manufacturer, 88 C 415
can claim damages for breach of contract in action for salaries due; can sue at once or wait for end of term, 90 C 695, 92 C 341
one action only is brought on a contract including present and future damages, 91 C 197
willingness to perform is a good defense when, 91 C 332, 92 C 183
in action on express contract for work, labor, and materials on cost plus plan, no defense that work was worthless, 92 C 600
federal act as to bonding contracts gives federal court exclusive jurisdiction to pass on claim, 93 C 165
duty to give notice of defect in property contributed to common cause must rest in contract or equity, 93 C 204
where owner has taken over work, contractor cannot make claim for materials left on premises and used to complete building, 97 C 720
——but contractor not liable for delays thereafter, 97 C 720
architect *held* entitled to damages for fraud and concealment of owner, 98 C 186
the special remedy prescribed by a contract for its breach does not exclude damages given by law, 98 C 729
——the question is one of intent to be gathered from the contract, 98 C 729
——defendant unable to manufacture; plaintiff *held* entitled to money advanced, 98 C 722
rights where contractor sublet painting to H, who gave bond for performance, but abandoned work before completion, and contractor then completed painting under provision in contract with H to do so and recover excess cost, and liens are filed for supplies furnished to H, 98 C 794
contractor cannot recover from city claims of third parties against him unless they have been reduced to judgment, 100 C 147
action for fraud in making contract is not an action on the contract, 100 C 491
where date for performance of written contract extended by oral agreement, damages computed as of date fixed in last extension, 101 C 265
owner may recover damage to interior of building by rain due to faulty construction of roof, 102 C 152
——he may also recover expense of repairs, 102 C 152
action for damages for fraudulent representations not inconsistent with action for breach, as each affirms contract, 103 C 390
damages for delay in construction of building in time agreed, 104 C 431
——may include cost of rental of other quarters pending completion less any savings by their use, 104 C 432
——difference of cost of labor at two places too remote, 104 C 432
——contractor cannot offset interest on payments withheld by reason of his delay, at least in absence of evidence that owner profited, 104 C 431
——rejection of bonus and forfeiture provision *held* not to indicate intent to waive damages for delay, 104 C 431
agreement not to use trade secret disclosed in confidence; breach restrained by injunction, 104 C 472
provision giving owner right to take over and complete work, *held* not an exclusive remedy, 105 C 11
liability of owner to contractor for delay caused by another contractor; duty of defaulting contractor to indemnify owner, 105 C 11
provision for $50 a day damages for delay *held* not to apply to additional sum paid, 105 C 13
——effect of judgment against contractor in action against surety on his bond, 105 C 13
contract and tort actions arising from same transaction; when tort duty dependent on existence of contract duty, 105 C 151
return of consideration as requisite to avoid contract by infant, 108 C 528
materialmen cannot impress money retained by State or town to indemnify against liens under contract, 109 C 547
limitation of town's liability to materialmen to contract price in act of 1925 does not include payments to contractor, 109 C 547
damages where contractor defaults are cost of completing job, 110 C 242
where one sues for compensation under contract, he cannot recover damages for its breach, 110 C 582
action against insurance broker for failure to secure policy for principal covering certain risk lies either in contract or tort, 118 C 584
——in former, contributory negligence not a defense, but it is in latter, 118 C 584
question as to when and to what extent a recovery for negligence may be based upon breach of a contract obligation considered and cases reviewed, 119 C 398
——breach by lessor of covenant to repair but one phase of question, 119 C 405
——fundamental nature of obligation the test as to whether action is founded upon contract or tort, 119 C 398
——instances of physician and patient, lawyer and client, bailor and bailee cited, 119 C 405
——but liability for negligence arising out of contract relationship not to be narrowed to

established relations such as these, 119 C 407
——negligence occurs where one under duty to exercise certain degree of care to avoid injury to others fails to do so, 119 C 398
——and action may arise whether there is contractual relationship or not, 119 C 398
——mere breach of contract would not afford basis for recovery in tort, but necessary elements to establish negligence must be shown, 119 C 409
——nor could cause of action be based on agreement without consideration, 119 C 409
——but scope of undertaking may be such that duty to use care may extend beyond promisee to others, 119 C 410
——for application to LANDLORD AND TENANT, see that title
specific restitution as remedy as alternative to damages, 121 C 548
plaintiff not denied injunctive relief restraining defendant from continuing in sawdust business contrary to agreement, where transfer of his property to avoid claim was not intended and did not work any fraud against defendant, 122 C 556
if plaintiff requires aid from illegal transaction, he cannot recover; as where conditional sale contract was part of general scheme to defraud creditors of third party, 128 C 195

§ 45. ——Parties; Third Party Beneficiaries

one performing act may sue on promise to pay whoever will do it, 2 R 120
parties authorizing third party to contract for their benefit are liable, though contract be in name of third party, 2 D 358
words constituting joint and several obligation, 2 D 442
——written authority construed as part of contract, 2 D 358
pauper cannot sue on bond by town for his support, 2 D 559
one for whose benefit a contract is made may sue for its specific performance, 7 C 342
when promise is made for third person's benefit, 14 C 445
beneficiary or promisee may sue on promise to one for another's benefit, 18 C 244
joint adventure; settlement of account; interest on advances by plaintiffs *held* properly allowed, 24 C 384
partnership contract; plaintiffs *held* entitled to one third of the entire profits, 24 C 385
land speculation; terms construed and rights of parties determined, 27 C 215
stockholders' agreement inter se, de liability for indorsements, 30 C 70
stranger to consideration cannot sue on promise to pay debt of another, 31 C 95
actions on, can be brought only by him with whom made and from whom consideration moved, 49 C 203
——exceptions to rule, 49 C 203
under an agreement between insurance companies to unite in defending suit in which all were interested, 50 C 244
——*held* that companies were jointly liable to all persons rendering services to their agents in the suit, 50 C 244
——provision to contribute in proportion to insurance held not to affect outside creditor, 50 C 244
right of stranger to consideration, to sue on contract, 71 C 245, 72 C 68, 73 C 396, 77 C 42
A contracts with B for building; though B takes C into partnership thereafter, he is still sole party to contract, 72 C 378
must be party to contract to be subject to mechanic's lien, 83 C 82
when contract is that of corporation or personal obligation of officers, 85 C 216, 88 C 383
one doing business under assumed name can enforce contracts, 89 C 293
executor held personally on his contract made on behalf of estate, 89 C 331
liability of stranger for inducing breach of contract, 98 C 11
one may sue on or defend upon a contract for his direct and exclusive benefit, 99 C 203
——thus in action of foreclosure by assignee of mortgage defendant may plead agreement between plaintiff and assignor that former would not bring foreclosure proceedings for certain time, 99 C 204
if one sues or defends on contract made by third party for his benefit court can summon in any necessary further parties, 99 C 204
one term only in agreement may be enforced by third party beneficiary, 99 C 206
——exception to right of third party to sue where a partnership or corporation has assumed the debts of another, 99 C 215
right of purchaser of property as sole beneficiary to enforce contract made before purchase in interest of unidentified purchaser, 101 C 627
one who sues on contract made by another for his sole benefit should make that other one a party, 101 C 646
liability of one who induces another to break contract or prevents another from carrying out lawful business transaction, 103 C 708
owner, who furnishes material after neglect or refusal of builder to do so, may also maintain action for delay, 104 C 430
debtor cannot escape liability on ground that third party promised him that he would pay bill, 104 C 519

liability of owner to contractor for delay caused by another contractor; duty of defaulting contractor to indemnify owner, 105 C 11

contract enforceable by third party only when made for his direct and exclusive benefit, 105 C 151

inhabitant of fire district whose house is burned cannot sue for breach of contract between district and water company, 105 C 151

third party may enforce promise for his direct and exclusive benefit; intent to benefit implied, 106 C 683

right of one for whose benefit promise is made to sue upon it under Florida law; their law same as ours, 106 C 684

——where several persons agree to reimburse nominal owner of property for all expenses incurred in connection with its development and sale, holder of mortgage can sue them where nominal owner assumed mortgage, 106 C 684

oral agreement by mortgagee to release lots as sold in building development from operation of blanket mortgage *held* not to run with land nor enure to benefit of subsequent incumbrancer, 108 C 26

statute imposing liability for damages upon one renting automobile to another annexes term to contract of hiring, 108 C 333

——designed to benefit any member of public injured and may be enforced by him under third party beneficiary rule, 108 C 333

third party beneficiary may sue where intent is to confer on him a right against promisor, 109 C 256

——he need not be identified when contract made, 109 C 256

——materialmen entitled to recover on construction bond providing that contractor will pay all persons having contracts with him for labor or materials, 109 C 256

basis of rule permitting third party beneficiary to sue, 110 C 89

——rule applied to assumption of mortgage despite fact that some owner of equity in chain of title has not assumed it, 110 C 89

——intent to confer benefit to sue on third party is to be found in contract read in light of surrounding circumstances, not actual intent, 110 C 89

third party beneficiary subject to all defenses against original obligee, 111 C 269

right to recover from one assuming mortgage rests on theory of third party beneficiary, or principal and surety, 111 C 269

——and cannot be enforced where contract induced by fraud, 111 C 269

action in contract lies against title searcher on ground he failed to use proper care, 111 C 537

lienors claiming right under release clause in mortgage as third party beneficiaries have no greater rights than mortgagor, 114 C 467

mortagee's president assured receiver of mortgagor that he would not bother him for payments on principal for couple of years; *held* assurance given for protection of receiver only and not binding agreement as to corporation which took over property for benefit of stockholders of mortgagor, 117 C 218

policy of group insurance is in class of contracts for benefit of third parties, but differs in that third party pays part of consideration, 120 C 60

assignee of money due contractor could sue in own name without joining contractor, where assignment accepted by town, 120 C 274

——though town might have taken steps to have contractor joined, by going to trial without objection it waived any defect, 120 C 274

relations of parties to insurance policy are contractual and when proceeds are payable to third person it is third party beneficiary contract, 120 C 633

——right reserved by insured to change beneficiary is in nature of power of appointment, 120 C 633

——whether particular provision confers rights on beneficiary depends on intent of immediate parties, 120 C 633

——provisions de method of changing beneficiary are ordinarily for sole benefit of insurer, 120 C 633

——provision that change can be made only by presentation of policy for indorsement by insurer is of this character and may be waived by insurer, 120 C 633

fact that sewer district was not party to agreement disregarded, where there was identity of interest, 121 C 625

where insurance was taken out in name of nominal owner of property, he was trustee of resulting trust for real owner, who was suing as beneficiary of written contract, 123 C 414

carpenter brought action for wages as third party beneficiary under PWA contract between contractor and State, 124 C 1

fact that one has been compelled to pay money under contract with another because of negligent conduct of third person, does not give first right to recover from third person amount so paid in absence of privity of contract or direct obligation from third person to first, 124 C 227

——such payment is remote and indirect consequence of third person's misconduct, 124 C 227

——rule not applicable where there is intent to injure through contract liability or there is fraudulent or malicious design to injure, 124 C 227
rule not available in action for breach of warranty of wholesomeness of food sold by one not party to contract; any benefit accruing to third parties merely incidental, 125 C 98
where plaintiff furnished services and materials on property at A's request and on her credit he cannot recover from owner of property though latter was benefited; no mistake or unjust enrichment, 126 C 712
town chargeable with child's support is not necessary party to bastardy action by mother, 128 C 314
——could sue as third party beneficiary where bond provides for its indemnity for expense of maintenance, 128 C 314
statute that check does not operate as assignment of funds and that bank not liable to holder unless it accepts or certifies check, 128 C 476
——controls liability of bank to holder, and any common-law right of latter to recover as third party beneficiary supplanted, 128 C 476

§ 46. ——Pleadings; Evidence

performance should be averred, in action on dependent covenants, 4 D 322
——if merely question of fact, general averment sufficient, 4 D 322
——if question of law, manner of performance must be averred, 4 D 322
the whole consideration should be correctly alleged, 4 C 265
onus on party pleading performance, 8 C 303, 20 C 85
declaration insufficient if breach laid does not follow covenant, 13 C 424
general allegation of performance, in plea to action on bond, sufficient when, 13 C 441
——replication must allege specific breaches, 13 C 443
receipt as evidence of contract, 13 C 492
declaration must disclose a legal consideration, 14 C 343
plea of performance does not put in issue sufficiency of pleadings, 20 C 85
averments of readiness to perform, required when, 26 C 119
——"tender," of different meaning than when applied to payment, 26 C 119
guaranty of mortgage debt variant from debt as described in mortgage, 32 C 171
——parol admissible to show that debt secured by mortgage was intended, 32 C 171
effect of variance between consideration alleged and that proved, 32 C 303
where consideration is laid as executed, the act constituting same must be averred to have been done at defendant's request, 36 C 9
evidence is admissible that patent contracted for was worthless, 39 C 306
for use of portable steam engine; evidence by defendant as to its market value *held* inadmissible as tending to show what he agreed to pay for its use, 49 C 575
a statement of a pecuniary consideration in deed does not preclude parol proof of actual consideration, 59 C 135
evidence as to the value of use of tools in performing building contract *held* inadmissible unless contract has been abandoned, 59 C 562
——and only in connection with evidence de value of services, 59 C 562
letter of party accompanying contract *held* inadmissible to show false inducement, 61 C 462
——where question was only whether plaintiff executed and delivered contract, 61 C 463
evidence to prove damages where action brought to recover for services accepted under contract substantially performed; contract price, 74 C 418
impossibility of performing alleged contract as evidence that it was never made, 78 C 219
contract may be pleaded in general terms, 81 C 479
when antecedent oral agreement is admissible, 82 C 427
real consideration can be shown by parol, 82 C 479
must have evidence of contract to recover on warranty, 83 C 231
defense of rescission must be pleaded, 83 C 528, 86 C 22
construction of lease from A to B shown by receipts for rent on issue in an action by C against D, 84 C 191
validity of contract not determined on finding based on evidence wrongly admitted, 84 C 694
expert opinion on nontechnical words not admissible, 85 C 181
reasonable cost of work as evidence of making contract, 85 C 486
a receipt is admissible to fix date and is real evidence of payment, 85 C 613
must specially plead that contract was made on Sunday, 85 C 635
rescission of contract must be specially pleaded as defense, 86 C 22
fulfilment of condition precedent must be alleged and proved, 86 C 188
burden of proving abandonment of contract is on party asserting it, 87 C 691
if agreement is to construct building to satisfaction of owner this must be pleaded, 88 C 619

dissatisfaction with work must be pleaded; waived if nonperformance and damages alone are asked, 88 C 619
variance immaterial to cause of action, 89 C 254
oral evidence admissible to show terms; custom of trade, 90 C 320, 92 C 419
to recover extra compensation by servant after death of employer, clear proof of contract is called for, 90 C 611
burden is on plaintiff to prove terms of sale, 91 C 185
on warranty, need not prove that defendant knew or ought to have known that goods were defective, 92 C 600
must plead facts showing consideration inadequate to get relief, 92 C 643
entire contract admitted by pleadings, 93 C 238
contract replacing one in question may be consulted on question of damage, 93 C 277
statement at legislative hearing by president of company evidences construction put on provisions of its bonds, 94 C 44
charts on file with public utilities commission as evidence of construction of provisions in bonds, 94 C 44
what is sufficient to show business identity of contracting parties, 94 C 79
when one falsifies own report of weight of metal sold, other party not estopped from amending his complaint because he had accepted false figures as true, 94 C 311
actual forbearance is evidence of agreement to forbear, 95 C 199
where it is known by judicial notice that alleged consideration is of no value, defect may be raised by demurrer, 95 C 703
real consideration of written agreement, even under seal, may be shown by parol, 97 C 193
surrounding circumstances, placing court in position of parties, properly proven, 97 C 653
whether contract so inequitable because of right in buyer of goods to cancel order as to be unenforceable cannot be determined on demurrer, 97 C 703
rescission is affirmative defense which plaintiff not bound to meet in first instance, 100 C 39
——though his evidence established it, nonsuit not proper, 100 C 39
notation on copy of contract annexed to complaint "acceptance and variations made by parties by correspondence, after date of the order" *held* to justify evidence of change not otherwise pleaded, 100 C 719
pleadings *held* to raise issue whether contractor wrongfully ousted, 101 C 208
as to necessity of affording reasonable opportunity to contractor to secure correction in architect's certificate, 101 C 214
practical construction of parties as presumptive evidence of intent, 101 C 601
claim that covenant not to engage in business is unreasonable must be raised on pleadings, not by objection to evidence, 101 C 713
demurrer does not admit allegations as to construction and effect of contract, 102 C 488
burden of proving consideration, 102 C 620, 106 C 147
rescission must be specially pleaded, 102 C 626
illegality of contract must be specially pleaded unless apparent on face of contract and all circumstances are before the court, 103 C 380
plaintiff *held* entitled to recover on second count under parol agreement for extra work, though first count on written contract is bad for variance, 103 C 491
written contract for exchange of automobiles *held* not to embody entire agreement of the parties, 104 C 366
where contract alleged to be partly written and partly oral, its sufficiency cannot be tested by demurrer which reaches only the writings, 104 C 645
judgment obtained by contractor against owner for delay caused by another contractor, admissible as prima facie evidence in action by owner against the defaulting contractor, 105 C 11
where city claimed it had to pay additional sum to second contractor for building of bridge, due to delay of first contractor, verdict for city cannot stand in absence of proof that delay of latter caused additional payment, 105 C 12
on demurrer, pleading setting forth written agreement is tested in light of the facts alleged, 107 C 40
action for specific performance, and one for damages for breach of contract, may be joined in one count, 107 C 207
complaint setting up failure to return note as agreed *held* to be one for conversion, 107 C 575
evidence of trade custom not admissible to prove probability of existence of claimed agreement, unless parties knew of custom, 108 C 521
no presumption that contract made with reference to a custom, unless parties knew or should have known it, 108 C 521
existence of first agreement may tend to enhance probability of second agreement claimed to have superseded it, 109 C 1
evidence justifying conclusion that written order was not intended to constitute entire contract, 110 C 49
——and that parol representations constituted express warranty, 110 C 49

actual forbearance is evidence of agreement to forbear, 110 C 174
promissory representations in absence of allegation or proof of intent not to perform them, not actionable, 113 C 429
one giving order for goods may, under general denial, prove cancellation before acceptance, 114 C 12
burden of proof to show that an agreement has actually been made rests on plaintiff, 114 C 12
in action for breach of contract of employment where defendant alleged plaintiff had failed to perform work properly, charge placing burden of proof on him not error, 114 C 662
reception of interest in advance upon a note is prima facie evidence of binding contract to forbear and delay time for payment, 116 C 480
——recovery cannot be had during period for which interest has been paid, 116 C 480
——and agreement to forbear if subsequently made would bind party to do nothing further than he was already bound to do, 116 C 480
in absence of special plea, cannot claim novation, 120 C 622
jury justified in deciding that contract for production of "sales activator plan" was made with plaintiff, not with advertising agency employing him, 121 C 397
in absence of claim of fraud or mistake, testimony that before writen agreement was signed it was understood that a certain provision should not be operative was inadmissible, 128 C 146
in contract for sale of package store in which plaintiff agreed to effect compromise settlement with creditors, *held* he sustained burden of proving that he did so, 128 C 683
evidence supported finding that there was no agreement by defendant to make loan, 129 C 413

§ 47. ——Construction by Court or Jury

construction of writing; when a question of law, and when one of fact, 8 C 127, 13 C 318, 33 C 333, 38 C 167, 46 C 413
reasonable time to perform is one of fact, 81 C 343
terms of partly written and partly oral contract left to jury, 83 C 167
whether contract existed is for jury, 83 C 196
which party should perform first is question of fact, 87 C 682
meaning of written offer and letter accepting is for court, 87 C 691
construction of written agreement is for court, 88 C 656
written instrument construed by court; if extrinsic evidence, then by jury, 89 C 607
question of substantial performance one of fact, 91 C 281
waiver of contract question of fact, 91 C 281
when facts are unquestioned public policy is question of law, 92 C 621
whether or not consideration is adequate is conclusion of law, 92 C 641
reasonable time to rescind is question for jury, 93 C 690
whether written proposal and its purported acceptance constitute complete contract is question of law, 96 C 89
even though written agreement depends on surrounding circumstances, it is question of law, 97 C 653
where all facts found, whether there is a valuable consideration is question of law, 98 C 349
——agreement for life occupancy of premises by grantor and her support during life, 98 C 354
where facts undisputed, construction is for the court, 100 C 589
——as whether there was an implied condition to the contract, 100 C 589
——where facts disputed, court may have jury find the facts and then it may interpret contract, 100 C 589
construction of contract of employment admitted on pleadings a question of law, 100 C 737
effect of contract with reference to nature of relationship created, whether that of master and servant or landlord and tenant, 100 C 743
duration of landlord's agreement to make repairs to premises is question of fact for jury, 101 C 683
waiver of right to rescind question of fact, unless only one conclusion reasonable, 102 C 137
whether on facts found a complete contract had arisen before a sale slip was sent is a question of law, 102 C 630
——actual understanding of parties is not of consequence, 102 C 630
construction of contract presents question of law for the court, 104 C 23
construction of plans and specifications annexed to building contract presents question of law, 104 C 431
where contract unambiguous, or though ambiguous its meaning depends on extrinsic circumstances which are undisputed, construction is for court, 104 C 645
——where circumstances are in dispute court submits case to jury to decide facts with proper instructions or may submit interrogatories and then interpret contract in light of facts found, 104 C 645
terms of contract found on conflicting evidence, 105 C 252

construction of contract clear and complete on its face is for court though it is only a part of the whole agreement of the parties, 106 C 678

whether annual payment of percentage of receipts by street railway to city is a tax or voluntary contractual obligation is a question of law, 107 C 312

construction of written contract is for court, 108 C 129

whether there was substantial performance of building contract question of fact, 112 C 381

though contract is oral, when its terms are settled its meaning and effect is question of law, 112 C 391

whether contract is a wagering one, usually question of fact, 115 C 226

it is for court to determine what actual agreement of parties was, 123 C 141

CONTRIBUTION AND REIMBURSEMENT

§ 1. In General; Miscellaneous Cases
2. Between Sureties and Between Insurers

§ 1. In General; Miscellaneous Cases

heir whose land is sold by executor for debts is entitled to contribution, 6 C 267, 45 C 603

rule as to contribution for funds of association lost by neglect of trustees who are shareholders, 9 C 21

specific legacy; specific devise in lieu of dower, 26 C 263

when allowed among tort-feasors, 28 C 458

——on judgment against joint owners of coach for injury by negligence of one, evidence is admissible to show injury was fault of one, 28 C 458

——assumpsit is the proper remedy for, 28 C 461

where one pays a debt the obligation of which rests upon another, the former is entitled to reimbursement, 28 C 462, 44 C 14

averments necessary in suit for, 29 C 7

where liability of each is a fixed proportion of the whole loss, the insolvency of one is of no effect, 30 C 72

——aliter where entire debt or duty is owed equally by several, 30 C 72

master may recover proportional part of judgment paid from servant, when, 37 C 351

division of store; subletting; one joint tenant not obliged to account for excess received from subletting, 44 C 208

——guarantor of other joint lessor is not entitled to contribution, 44 C 209

grantee of part of mortgaged premises by warranty deed is not obliged to contribute to subsequent quitclaim grantee who is compelled to pay whole debt, 46 C 53

——aliter, if second price be insufficient to pay mortgage debt, 46 C 53

tenant in common making necessary repairs can recover from cotenants, 50 C 257

contribution is an ordinary civil action under Practice Act, though previously assumpsit would have lain, 50 C 257

expenses incurred in rescuing property for many may be paid from common fund, 52 C 237

——court of equity may so order, 52 C 237

between joint tenants and cotenants expenses must be for benefit of common estate, 52 C 262

——cotenant liable only for benefit to his interest, 52 C 262

for expenses of defense; nominal defendant whose real interests are with plaintiff *held* not liable to contribution, 52 C 262

——especially where he acts with plaintiff and receives no benefit, 52 C 262

no action for contribution lies by one partner against another until firm accounts are settled, 54 C 233

no claim for contribution can be based upon a mere voluntary payment, nor can such payment be made a ground of defense, 56 C 358

part of heirs failing to contribute to money raised to save estate are not liable at law to action for contribution, but those raising the fund may acquire an equitable lien on estate, 58 C 205

no contribution among joint tort-feasors, 83 C 27, 103 C 29

contribution rests on assumption that those incurring expense are interested in warding off peril, or in securing benefits common to themselves and those from whom reimbursement is sought, 93 C 590

life beneficiaries whose interests are not imperiled cannot claim reimbursement from residuary legatees for expenses in defeating trustee's excessive charges, 93 C 590

legal liability of third party is condition precedent to employer's right to reimbursement for compensation payments, 101 C 200

——not proven by third party's voluntary settlement with employee, 101 C 200

general principles of contribution, exoneration and reimbursement, 110 C 229

joint debtor who is compelled to pay whole debt may have contribution from other debtor, 110 C 342

——compulsion established where payment was demanded and enforceable by suit, 110 C 342
——if one debtor holds fund from which both are entitled to reimbursement and other pays, he is entitled to reimbursement of whole sum paid, 110 C 342
——where one coexecutor received fund of estate and applied it to his own use, other coexecutor who pays amount to estate is entitled to reimbursement of amount paid, 110 C 342
husband may maintain action against wife for contribution for expenditures on property owned in common by them, 110 C 651
doctrine of contribution does not apply where person of own volition incurs expense to defend rights of another, 112 C 662
where judgment in tort is recovered against two defendants, one paying has no right of contribution, 118 C 633
where voluntary association is formed to engage in business and make profits its members are liable as partners to third persons on contracts which are within its scope and are entered into with actual or apparent authority, and a joint judgment against them is justified, 119 C 681
——when member cannot obtain reimbursement from it for liabilities he has discharged, he is entitled to contribution from all other members, 119 C 681
——but when purpose is not business or profit, liability of members not in nature of partners but of principal and agent, and only those members who authorize or ratify obligation are liable on account of it, 119 C 681
——person may authorize obligation by becoming or remaining member knowing that such contract would be proper or if contract is outside scope of purposes, by assenting to it or participating in undertaking, 119 C 681
——actions for contribution based on principle that where one is compelled to pay money which others are equally bound to pay, each of latter should contribute his proportion, 119 C 681
——as between members of nonprofit unincorporated association, each is bound to contribute only aliquot share, 119 C 681
——in present case plaintiff should recover of each participating defendant his aliquot share of entire amount expended to take up note of lodge on which they were indorsers, 119 C 681
——amount arrived at by dividing net amount paid by number of participating members including plaintiffs, 119 C 681
——and nonjoinder in action of other participating members not a defect, as computation based on number potentially liable, and defendants not prejudiced by absence as parties of others similarly situated, 119 C 681
actions for contribution are equitable in origin but now recognized in courts of law, 119 C 683
rights of cotenants where one redeems premises after foreclosure and other does not contribute, 122 C 406
whether executors have right to recover inheritance tax from beneficiaries under will or trust, presents question as to equitable doctrine of reimbursement, 124 C 71
where one pays a debt the obligation of which rests upon another, the former is entitled to reimbursement, 124 C 71
contribution is payment made by each, or by any, of several having common interest or liability, or his share in loss suffered or in money necessarily paid by one of parties in behalf of the other, 124 C 227
doctrine based not on contract but upon equitable principle that those voluntarily assuming common burden should bear it equally, 124 C 227
——essential to principle that party claiming contribution be in aequali jure; if his obligation is primary and that of defendant secondary only, he cannot have it, 124 C 227
plaintiff paid compensation to X, injured on job plaintiff contracted to do for defendant, by negligence of latter's employee; *held* liability of plaintiff as immediate employer primary and of defendant as principal employer secondary only, and former could not recover on ground of indemnity or contribution, 124 C 228
though master and servant are both liable for tort of latter in the course of his employment, are not equal wrongdoers, 125 C 293
——master is not entitled to contribution if he pays damages, 125 C 298

§ 2. Between Sureties and Between Insurers

joint bond for purchase of land; different interests; bankruptcy of some, 2 D 492
action for contribution by debtor whose land is taken on execution is not maintainable until transfer of titles is effected in form, 8 C 538
right of mutual contribution exists only among sureties for the same thing, 40 C 560
——sufficient if the several contracts refer to same thing in law, 40 C 560
mutuality in contribution depends not on relation of joint makers but on cosuretyship, 40 C 560
no right of contribution exists between sureties and guarantor of maker's ability, nor between surety and supplemental surety for all prior parties, 40 C 561

supplemental surety signing note as joint maker and secured is bound to make contribution, 40 C 563
plaintiff voluntarily paying nonenforceable claim has no right to contribution, 49 C 90
agreement for contribution between insurance companies uniting in defending loss in which all are interested, 50 C 244
——*held* companies jointly liable to all persons rendering services to their agents in the suit, 50 C 244
——and provision to contribute in proportion to insurance *held* not to affect outside creditor, 50 C 244
——defendant company *held* liable for one-half the amount paid by plaintiff company, their respective policies being for the same amounts, 50 C 245
parties liable to contribution, becoming insolvent, not to be considered in determining amount due, 50 C 244
plaintiff suing for contribution *held* not bound to have pleaded in abatement the nonjoinder of his cocontractors in suit on original claim, where his cocontractors knew of such suit and made no request for such a plea, 50 C 245
parties liable to contribution liable also for share of expense and cost of defending the original suit, if defense of that suit was reasonable, 50 C 245
——not necessary that party liable to contribution should be concluded by judgment, 50 C 245
——would be liable if amount was reasonable and had been paid without suit, 50 C 245
where one pays whole claim he may sue one contributor only, without regard to others, 50 C 246
——where only one solvent contributor is within jurisdiction, 50 C 246
where several parties are liable for and some pay more than their share, they may recover excess from others, 50 C 246
parol evidence admissible to show the true relations between parties bound by written obligation, 62 C 467
——facts thus shown are not a part of the contract but wholly collateral, 62 C 468
——A, B, C and D signed a joint and several note for benefit of A; D prefixed "surety;" in suit of B v. D for contribution, *held* B could show his real relation as surety although an apparent principal, D being without knowledge, 62 C 468
——D could show that he was surety for all other signers, B being without knowledge, 62 C 470
——but to recover, B must show that defendant D was a cosurety, 62 C 468
principle and doctrine of contribution stated, 62 C 467
——can never be used to enforce an unjust or inequitable demand, 62 C 468
a surety for sureties is not liable to latter for contribution, 62 C 469
——if compelled to pay, his claim on sureties would be for indemnity, not contribution, 62 C 470
accommodation indorsers may specially agree that they are to be liable jointly as cosureties and not severally, in which case there is right of contribution between them, 117 C 15
——such agreement may be proved by parol or inferred from circumstances, 117 C 15
——most instances where agreement to be jointly liable is inferred are where indorsers were stockholders in corporation which was maker of note given to raise money for corporate purposes, 117 C 22
guarantor as between himself and coguarantor is principal for portion of debt which he ought to pay and surety for remainder, 122 C 315
——if one guarantor is compelled to make good he has right of contribution against coguarantors, 122 C 315

CONVERSION

See Trover and Conversion

COPYRIGHT

sale here of copies printed here for owner of copyright, residing in New York, is an infringement of Connecticut owner's copyright, 1 R 133
contract in violation of copyright, void, unless by consent of owner or assignee, 3 D 158
printer knowingly violating cannot recover for his labor, 3 D 158
statute de publication of title is merely directory, 3 D 158
——requiring delivery of copy to secretary of state, 3 D 158
refusal to find that book was copyrighted by person in whose name it was copyrighted, error, 70 C 678

CORONER

See Public Officers § 14

CORPORATIONS

§ 1. In General
2. Creation and Organization; Amendment of Charter
3. Officers and Agents
4. Directors
5. Stockholders
6. ——Generally
7. ——Rights
8. ——Liabilities
9. Capital Stock
10. ——Generally
11. ——Subscription and Payment
12. ——Transfer of Shares
13. ——Dividends and Surplus
14. Rights and Powers; Ultra Vires
15. Liabilities
16. Reorganization, Consolidation and Merger
17. Dissolution
18. Meetings; Votes; By-Laws; Records; Proceedings
19. Foreign Corporations
20. Actions
21. ——In General
22. ——Pleading and Evidence

Note: Cases pertaining to taxation of corporations are listed under Taxation § 14, and to receivership of corporations under Receivers and Banks and Banking § 8.

See also Agency; Beneficiary Associations; Charities § 6; Church and Ecclesiastical Societies; Electric Light and Power Companies; Gas Companies; Insurance; Master and Servant; Telephone and Telegraph Companies; Waterworks

§ 1. In General

company cannot complain as common informer merely; must have a direct interest in subject matter, 1 C 6

cannot take advantage of their own wrong, 2 C 254

equity jurisdiction over, for breach of trust, extends only to charitable corporations, 6 C 244

immortality is an attribute of, 6 C 543

eleemosynary are subject to control of courts, 6 C 544

has no dwelling-place; residence is not fixed by requirement of charter to keep office in certain town, 13 C 210

charter of, not affected by subsequent general legislation without company's consent, 14 C 91

debts have no situs but follow creditor's person, 14 C 563

——stock of, takes a local character, 14 C 563

insurance, canal, bridge, and turnpike companies are not public corporations, 15 C 322

if capable to take by devise may take by description as well as by name, 17 C 186

charter reserving no right to repeal cannot be repealed without consent of, 33 C 117

joint stock companies are merely commercial partnerships, 33 C 456

under special charter company cannot escape taxation by claim of prescription, 35 C 21

corporation created by United States, amenable to and controlled by its courts only, 35 C 378

——title of director in such company cannot be tried by quo warranto in state court, 35 C 378

"principal place of business," is where the governing power is exercised, 40 C 70

——bona fide change is not prohibited by charter, 40 C 71

charters granting exclusive privileges are to be construed strictly as against corporation, liberally as to public, 42 C 202

assets constitute a trust fund, first for creditors, and lastly for stockholders, 54 C 412

general laws and police regulations affecting, are binding on, without their assent, 60 C 8

special charter not repealed by general law unless intent to repeal is clear, 65 C 410

right of State to forbid or condition holding of stock by an alien, 70 C 590

extent of power to amend general laws to affect existing corporations, 79 C 163

definition of a private corporation, de jure and de facto, 82 C 73

one State cannot give corporate powers in another State, 82 C 73

no formula as to what changes in a charter are fundamental and what incidental, 84 C 276

formerly powers of manufacturing company were closely defined in charter, 84 C 306

in construing charter, assumption is that language is used in its general sense, 84 C 306

policy of State, as shown by charters of similar corporations, regarded in construing charter, 84 C 307

charter construed in favor of State in doubtful cases, 84 C 307

distinction between joint stock and specially chartered corporations, 89 C 583

what law governs where corporation is organized in one State to do business in another, 94 C 555

transfer of personal property to a corporation for its capital stock divests owner's title completely, 95 C 713

provisions of general corporation law apply to all corporations organized under any general or special law of State unless otherwise expressly stated, 101 C 308

third persons may deal with property of corporation as they would that of individual, 101 C 724

"subsidiary" means that majority of stock of one corporation is owned by another; not that there is complete identity, 112 C 510

effect of sale of an asset by an insurance company, 113 C 14

relation of corporation to its corporate property is not that of a strictly legal trustee to his trust funds, 113 C 188

"location" of corporation in statute, refers to place where governing power is exercised, not where business is performed, 113 C 636

property of corporation not subject to control of individual members, whether acting separately or jointly, 114 C 42

corporation may be party to conspiracy, counted in computing its numbers, and indicted and convicted, 114 C 354

corporation may commit crime involving intent to steal or misappropriate property, 114 C 354

how acknowledgment of corporation to instrument should be taken, 114 C 514

——where conditional bill was signed by H as treasurer but acknowledged by H individually, acknowledgment not good, 114 C 514

where courts will look through corporate entity to individuals who compose it, 114 C 531

H owned store and leased it to H Company, of which he took all the stock; *held* H Company not deprived of right to damages for taking of leasehold by city, 114 C 531

lease between owner and corporation of which he was president not void but only voidable at instance of parties concerned, 114 C 531

assets of corporation dedicated to its uses and payment of debts and upon dissolution and payment of debts to stockholders pro rata, 115 C 473

doctrine that corporation holds its property in trust for its creditors does not prevail in this State, 116 C 627

conditional sale to corporation not complying with statute is absolute sale against its receiver because he also represents interests of creditors, 117 C 163

equity will look through corporate organization to determine real interest of parties involved in certain cases, 118 C 17

——as where corporation is mere sham or device to accomplish ulterior purpose, or mere instrumentality or agent of another corporation or individual owning all or most of stock, 118 C 17

——to do so in absence of circumstances of that nature would be to thwart public policy not uphold it, 118 C 18

no statutory form of corporate acknowledgment prescribed in this State, 120 C 52

——certificate is sufficient which identifies the subscriber, specifies the writing subscribed, states the capacity in which he executed it and certifies his acknowledgment thereof, 120 C 52

——in case of a misnomer of a corporation in a grant, obligation or written contract, if enough is expressed to show there is an artificial being and to distinguish it from all others, this is sufficient, 120 C 52

——it is policy of law to uphold certificates when substance is found and not to suffer conveyances or proof of them, to be defeated by technicalities, 120 C 52
essentials of notice to corporation of assignment of debt owed by it, 121 C 40
milk producers who become members of association took advantage of its corporate existence by entering into contracts through it, cannot attack its corporate existence, 122 C 482
when necessary to validity of instrument, it is acknowledgment of party or parties executing it and to be bound by it which is required, 123 C 438
two parts of conditional sale contract construed to comprise the contract, both parties executed and were bound by it and valid acknowledgment of both buyer and seller essential to protect against attaching creditor, 123 C 438
second part of contract signed by seller by H. C. O., Jr. Sec'y, but due to mistake of notary acknowledgment certificate recited H. C. O., President; *held* acknowledgment defective and sale absolute as to attaching creditors, 123 C 438
rule as to service as required by statute particularly exacting as to corporations, 125 C 493
court of equity will look through corporate veil in certain circumstances, 128 C 221
——court determines whether or not to do so in pursuance of its judicial function to uphold ends of public policy, 128 C 222
——no such restriction upon the legislative function, 128 C 222
——corporation holds franchise subject to right of State to change general laws in manner not prejudicial to vested interests, 128 C 222
inherent in compact between members of corporation without capital stock that vote of majority should control and minority should peaceably submit, 128 C 541
there are instances where court will look through a corporation to individuals who compose it, 129 C 339
——this will be done where corporation is mere sham or device to accomplish ulterior purpose or the like, 129 C 345

§ 2. Creation and Organization; Amendment of Charter

toll bridge company required to maintain draw is subject to later act enforcing opening of draw, 4 C 54
incorporation not presumed from acts which voluntary association might perform, 6 C 302
charter presumed from long continued exercise of authority, 6 C 302
where charter is in nature of contract, it cannot be amended to disadvantage of company, 16 C 149, 17 C 40, 454, 18 C 53
acceptance of charter within reasonable time required, 16 C 180
meeting of stockholders, election of directors, with other acts *held* an acceptance of charter, 22 C 435
capital stock, it would seem, may be paid in in property, 27 C 89
certificate of stock commissioners de amount subscribed is final, 29 C 148
statute de acceptance of amendment of charter of any corporation *held* not to apply to municipal corporation, 29 C 174
term "organize" as used in charters, defined, 38 C 66
——construction of road before all stock was subscribed, under charter permitting "organization" on partial subscription, *held* valid, 38 C 65
what amendments of charter are and what are not binding on company without its consent, 38 C 71
——what are binding if assented to by majority of stockholders, 38 C 71
——and what amendments are not binding on nonconsenting members, 38 C 71
if no power to repeal a charter is reserved, none can be exercised, 42 C 583
power of General Assembly to amend without acceptance by corporation, 43 C 351
statutes de supervisory power are not strictly amendments, 43 C 379
——and to these 1845 act does not apply, 43 C 379
——act compelling railroad company to stop trains at certain station, 43 C 379
exercise of franchise is subject to proper regulation, 44 C 105
incorporated bondholders of railroad company, form a new and distinct company, 51 C 402
——that charter accords power granted to earlier company is immaterial, 51 C 403
——former charter not the source but the measure of power granted, 51 C 403
certificate of, is prima facie evidence of legal entity of company and that there is no legal bar to the transaction of business, 56 C 97
——burden of proof of defects in, lies on stockholders seeking to take advantage of contract, 56 C 98
an attempt in good faith to incorporate, not legally carried out, renders the alleged company a partnership, 57 C 394
——and capable of contracting as such, 57 C 394
provision and charter requiring a certain per cent of the capital to be paid in, *held* to protect stockholders as well as the public and third persons, 58 C 410
relation of promoter to corporation; cannot keep secret profit, 64 C 102

nature and construction of charter, 65 C 346, 84 C 306
amendment of special charters by general laws, 65 C 410, 79 C 164
what constitutes de facto corporation, 66 C 17, 72 C 65, 81 C 466
nature of certificate of organization; as evidence, under statute, 66 C 21
corporation is in existence for some purposes before it can commerce business, 66 C 23
act of all stockholders and of directors at their direction in reorganizing as act of corporation, 69 C 330, 91 C 191
when corporation has sufficient existence to bring action for fraudulent representations, 71 C 1
failure to file certificate of stock increase is mere irregularity, 72 C 664
amendment must be accepted and recorded; relates back then to time of passage, 73 C 506
persons to whom franchise is given by name cannot bargain it away; commissioners to receive subscriptions cannot delegate power; conclusiveness of their apportionment, 73 C 513
services rendered in organizing corporation constitute consideration for its note, 73 C 626
extent of right to amend under reserved power, 75 C 442
——may be by general law; grant of power to town to subscribe for stock as amendment; nature of such power and effect on corporation of conditions annexed to it, 80 C 646
renewal or continuance of expired franchise, 76 C 473
act giving cemetery association power to condemn land *held* not an amendment, 77 C 84
effect of amendment where corporation not organized and no funds or assets have been received, 80 C 652
two States can join in creating new corporation, 82 C 73
franchises can be granted to corporations of foreign States, 82 C 73
——each State can enforce liability in its own jurisdiction, 82 C 73
certificate of incorporation gives notice to all of what it contains, 82 C 418
a provision permitting creditors of a partnership to take preferred stock in a corporation which succeeded the partnership, in place of their claims, is valid, 82 C 421
statement in certificate of incorporation that stock has been paid for cannot be denied by signers, 82 C 562
specially chartered corporation, authorized to increase its capital, may do so by a stock dividend, 83 C 43
meaning of provision that certificates shall not issue until stock subscribed for and paid in full, 83 C 43
amendment may be accepted by a majority to give effect to separable powers though other powers require assent of all, 84 C 275
whether changes are material or incidental depends on facts; removal of tax exemption or increase of stockholders' liability, of no significance, 84 C 275
——when State can remove tax exemption and alter stockholders' liability, 84 C 275
whatever changes State may impose under reserved power, it may offer for acceptance of majority of stock, 84 C 275
amendment to water power company may permit production and sale of electricity, 84 C 275
amendment to charter offered as an entirety must be accepted as such, 84 C 276
exercise of powers contained in amendment implies acceptance, 84 C 276
fundamental and material alterations in charter must be accepted by all the stockholders; incidental changes by a majority, 84 C 276
rights and privileges given to incorporators as a reward is part of the charter's plans and purposes, 84 C 277
alterations in charter under reserved power may be accepted by a majority, 84 C 277
improper expenditures to obtain additional charter rights do not make grant nugatory, 84 C 277
effect of incorporating voluntary association, 89 C 616
——organizing a corporation by three members of voluntary association is not in itself an incorporation of the association, 89 C 616
charter provisions must be accepted; may be implied from user, 89 C 677
acceptance implied if corporation itself seeks provision, 89 C 678
stockholders' vote that stock be issued only for cash prevents its being given for services; corporation may be estopped, however, 92 C 266
where stock issued for other than cash, a failure to record that fact raises no presumption that it was issued for cash, 92 C 266
acceptance of railroad charter to locate to a certain width is acceptance of whole authorized width, 92 C 356
subsequent amendment of charter does not discharge or modify a contract obligation, 94 C 14
not fraudulent to incorporate business and transfer property to it for stock at its actual value, 95 C 713
——though corporation takes it subject to debts of the business, 95 C 713

to omit doing something not requisite to lawfully organize a corporation does not impute fraud, 95 C 713

purpose of filing certificates in town clerk's office, 96 C 465

——are not public notice to the community of their contents, 96 C 465

corporate existence begins when certificate is approved, 99 C 675

failure to file statutory certificates required for corporate organization, etc., or for change from par value to no par value stock, invalidates issue; subscriber entitled to money back in absence of laches, estoppel, or superior rights of creditors, 106 C 41

existence begins on approval of certificate of incorporation but powers are limited, 107 C 216

business contemplated by charter may not be transacted before final organization, 107 C 219

——ratification, after final organization, of contracts made prior thereto, 107 C 219

function of incorporators and power to organize (dis.), 107 C 225

removal of plant of corporation "located and established" in Bridgeport, to Detroit, not change of location requiring assent of two-thirds of stockholders, 113 C 636

where certificate of incorporation was filed and company acted as corporation *held* to be corporation de facto though certificate of organization not filed until after two years limit fixed by statute, 114 C 681

——de facto corporation defined, 114 C 687

mortgagee did not acquire rights against stockholders on assumption agreement because of defects in organization; de facto corporation, 114 C 681

estoppel from dealing with corporation defectively organized, to deny its validity, 114 C 689

where certificate of incorporation was filed but not certificate of organization, but organizer conveyed property to corporation and entered into contracts and obligations in its name, there was a de facto corporation, 115 C 473

——such a corporation may hold and convey real estate, 115 C 473

one who joins in filing certificate of incorporation and enters into contracts in its name and while in active charge incurs obligations to others is estopped to deny its existence, 115 C 483

——such estoppel binds his personal representatives, 115 C 483

conversion of state to national bank, and later conversion back to state bank by liquidation as national, *held* to effect change of jurisdiction only, and not creation of new bank with new stockholders, 116 C 172

amendment did not become operative until date certificate of approval of it was recorded in town clerk's office, 117 C 379

boy scouts' corporation without capital stock attempted amendment of charter to exempt property from taxation, 121 C 466

——amendment not effective because not voted by "incorporators, their associates and successors" at meeting duly called to consider amendment, 121 C 466

——but, instead, by meeting of "members" who were not shown to be incorporators, associates or successors, 121 C 466

——power to amend so definitely vested in and confined to incorporators that it could not be delegated to subsidiary body such as executive board, 121 C 472

§ 3. Officers and Agents

See also Agency; Master and Servant

secretary de facto is secretary within statute de service of process, 6 C 435

service of process on agent, as such, and acting clerk, is insufficient, 6 C 435

no legal disqualification of secretary that he permanently resides out of State, 6 C 437

officer elected for year ensuing holds until superseded, 6 C 438

right of amotion is not conferred by power to fill vacancies caused by death or removal, 6 C 545

right of amotion how to be exercised, 6 C 546

——amotion permitted only for just cause, 6 C 547

trustees of, have only powers delegated by charter expressly or impliedly, 6 C 547

general agent cannot convey real estate unless specially authorized, 7 C 219

attorney to convey land may be appointed by vote of directors, 8 C 205, 14 C 603

——without a power under corporate seal, 8 C 205, 14 C 603

agent or attorney conveying land of, must affix corporate seal, 8 C 206

promise to treasurer of company is a promise to company, 9 C 270

annual officers hold until new appointments are made, 9 C 542

authority of agent need not be proved by corporate vote or seal, 14 C 187

right of cashier to apply payments on verbal order of directors, 15 C 445

latitude of discretion of agents, 15 C 445

acts of commissioners under old charter never accepted, are void, 16 C 191

resignation of officers to prevent service of process, *held* of no effect, 20 C 457

company may so act as to ratify unauthorized act of agent, 27 C 554

——deed executed by agent without previous authority, 27 C 554

conveyance of corporate property signed by president in corporate name valid, 30 C 94
insurance company cannot revoke only agency in foreign State on whom service can be made, while policies are outstanding, 36 C 546
president, as such, can bind company only by proper official acts, 37 C 534
——but he may be the company's business agent, which may be shown in usual way, 37 C 534
unauthorized acts of officer if ratified bind corporation, 37 C 534
declarations of agent, within apparent scope of authority, bind company, 37 C 537
circumstances amounting to constructive notice to; ratification, 37 C 537
notice to president acting as general agent is notice to company, 38 C 218
knowledge of secretary while acting as private individual does not affect company, 41 C 264
"general business manager" has no legally defined powers, 42 C 559
——authority to bind company by any contract is a question of fact, 42 C 559
——employing physician to attend boy injured in company's mill, 42 C 559
committee of ecclesiastical society should transact its necessary business, 46 C 530
——should defend against legal proceedings endangering existence of society, 46 C 530
——and against petition for injunction of sale of pews, 46 C 530
——no right to defend at cost of society an action affecting committee personally, 46 C 530
——as the legality of their own election, 46 C 530
officer dealing with company as private individual will be protected, 47 C 55
——relation to company bears only on bona fides of transaction, 47 C 55
action against president, for neglect to make annual returns, does not survive against his executor, 48 C 16
where trustees of, sell their capital stock to company, they cannot defend on ground of ignorance of purchaser, 52 C 105
sale of capital stock of, by treasurer acting as broker, to himself as treasurer, invalid, 52 C 102
——knowledge of treasurer *held* knowledge of principal, 52 C 103
——wife of treasurer on same footing, 52 C 102
sale of capital stock of company to company by administrator; estate *held* liable to refund, 52 C 102
where A acted as agent in buying in capital stock and money was paid through him, creditors may recover of A, 52 C 104
——especially as he appeared on the books as last owning the shares, 52 C 104
——even though money did not pass through agent's hands, 52 C 106
person dealing with, is bound to know whether agent is authorized to act, 54 C 389
——if ordinarily so authorized, the third party is not bound to know of unusual facts making it improper in the particular case, 54 C 389
vote of directors designating treasurer as the one to sign, execute and deliver all papers, etc., 54 C 412
——*held* that vote did not confer power upon him to loan the credit of the company for private purposes, 54 C 412
a factor and financial agent of a manufacturing company has the authority habitually assumed and exercised by such an agent, 55 C 494
——not limited by the authority actually granted by principal, 55 C 494
prior course of dealing between same parties admissible de disputed authority of agent, 55 C 494
loan to "A. B. agent;" evidence that A. B. was bankrupt *held* inadmissible to show why transaction took that form, 55 C 494
——without evidence connecting this with other similar transactions showing like motive, 55 C 494
company vote not necessary to authorize acts of general and unlimited financial agent, 56 C 37
——all money and personal property is held under absolute control of a general and unlimited financial agent, 56 C 37
——the application by such agent of personal property to the payment of debts of company is binding on company, 56 C 38
——not affected by a mention of such property in a sealed instrument requiring a company vote for its validity, 56 C 38
appointment of agent at an assembly of all its stockholders is binding on joint stock company, 56 C 96
——notice, written resolution and record of doings is not essential; assenting speech and act is equivalent, 56 C 96
communication to manager of insurance company, *held* communication to company, 56 C 127
——also communication made to clerk by direction of manager of company, 56 C 127
a petition to railroad commissioners under statute, brought by executive officer of railroad with knowledge of directors, *held* properly brought, 57 C 101
——not affected by fact that vote authorizing same was passed at directors' meeting held out of this State, 57 C 101
circumstances *held* admissible as showing knowledge of fraud in company, 57 C 223

secretary and treasurer of manufacturing corporation has no authority to sell its machinery; what determines his authority, 69 C 565
estoppel of corporation to deny agency from permitting acts to be done, 69 C 565
real and apparent authority of officer to indorse note, 71 C 669
letter and report of president of company is not admissible against it, 72 C 131
corporation may issue note to president for services in organizing it, and for extra services, 73 C 626
agreement with president *held* not to bind corporation, 74 C 149
liability of officers for withdrawing funds of insurance company, 74 C 348
——for employing incapable agents; acceptance of notes in place of cash payments, 74 C 353
directors cannot give away rights by ratifying acts of agent, 74 C 353
promise by officer to pay debt of corporation is within Statute of Frauds; evidence as to assumption of personal liability in settlement of claims, 76 C 41, 92 C 587
duty and presumption as to communication of facts by one who is officer of two contracting corporations, 76 C 476
general officers represent and, in effect, are corporation, 79 C 219
estoppel of corporation by act of general agent, 79 C 389
presumption that officer whose name appears in last report on file continues in office; filing tax list of corporation as strengthening this presumption, 80 C 42
as to retention of money wrongfully obtained by agent and placed to credit of corporations, 80 C 96
authority to president to dispose of property implies right to institute action to determine title to it, 81 C 467
on failure to hold annual meeting, officers hold over, 81 C 467
as long as officers are efficient, a corporation has no legal interest in their choice, 82 C 178
treasurer can make valid contract with approval of directors, 82 C 220
authority of agent may appear from action of corporation or knowledge of its directors, 82 C 286
agent in charge of newspaper office cannot enter into advertising contracts, 82 C 448
delivery of note to one's agent who was also director of an organization was not delivery to the organization, 82 C 504
knowledge of president who is acting in another capacity as knowledge of the corporation, 82 C 508
signing certificate that stock is fully paid up estops one to deny it as against creditors, 82 C 560
rule that in dealing with others a general officer is the corporation, not applicable to fraternal benefit association, 84 C 356
to show officer's lack of power, actual lack of authority as well as apparent lack of authority in view of his position, duties, and conduct must be proved, 85 C 148
signature of company followed by names of corporation officers with or without "per" or "by," is contract of company; use of "we" or "I" not sufficient to change this, 85 C 216
intention of subscribing officers controlling in determining personal liability, 85 C 216
officers exceeding authority incur personal liability; this is collateral to the contract of the corporation and tortious, and a judgment cannot be rendered where only contract and breach is alleged, 85 C 216
president of mercantile company has power to hire help, 85 C 513
equity acts against usurping officers; does not try title of office unless necessary as an incident; can restrain waste or misappropriation, 87 C 656
one may be held personally as agent of company on implied warranty of authority, 88 C 233
no personal liability if company accepts the contract and is bound by it, 88 C 233, 385
ordinarily resignation of officer takes effect when tendered, 88 C 334
statement of fact by company official regarding company business is admissible against company, 88 C 415
answer to a letter by company agent presumed to be made by one whose duty it was to make it, 88 C 515
notice to employee within line of duty is notice to company, 88 C 670
agent of corporation may become for time being, agent of officer individually, 88 C 710
action against president to recover checks in his possession not action against corporation, 92 C 11
oral promise of a company officer to pay for supplies is an original undertaking not within Statute of Frauds, 92 C 587
lease, taken in individual name to avoid obligation of corporation, regarded in equity as its lease, 93 C 633
president's statements at legislative hearing as showing company's construction of bond provisions, 94 C 44
stock purchased by officer in own name with company funds impressed with constructive trust, 94 C 597
knowledge of officer as that of corporation, 94 C 610, 612

officer or agent, as well as corporation, liable for torts, 97 C 402
officers to be chosen in accordance with statutory requirements, 97 C 450
letter of vice-president to employ plaintiff, construed; damages, 97 C 651
president and general manager is only agent and employee of corporation, 99 C 722
——corporation not liable where he takes automobile at night for pleasure of his own family, 99 C 722
——that driver was employee of corporation will not make it liable, 99 C 722
general manager has authority to pay or compromise debts owed by corporation, 100 C 62
act of secretary in issuing false statement of which stock held by defendant to attaching officer and statements therein are acts of corporation, 100 C 255
——but attaching creditors cannot claim estoppel without proof that there was other property of defendant he might have attached, 100 C 255
duty of president not to engage in secret competition with his corporation, 102 C 169
contract by president to assign patent rights to his corporation, 102 C 169
fiduciary relationship of president and general manager, 102 C 184
——he is bound to account for profit made in dealing in article in secret competition with corporation, 102 C 184
incorporators as agents with authority to incur reasonable expenses before organization, 107 C 216
where corporation has means of knowledge its agent must be treated as affirming that he knows whereof he speaks, 108 C 511
one who is president, general manager and agent to obtain stock subscriptions *held* authorized to represent to purchaser that outstanding stock was paid for, 111 C 502
officers of corporation trustee not liable under statute penalizing misappropriation of funds by trustee of an express trust but may be under statute punishing any officer or agent of a corporation misappropriating funds, 112 C 39
——but one officer not liable for acts of another unless he participated or acquiesced therein with criminal intent, 112 C 39
consent signed by president as individual to release of building restriction affecting lot owned by corporation not binding on it, 114 C 40
fact that president arranges all terms of lease of property he owns does not make lease void but only voidable, 114 C 531
——city which condemned property could not treat it as void, 114 C 531
corporation or its receiver cannot appropriate benefits of contract made by officer and repudiate obligations entered into by him therein, 117 C 58
——when agent has made contract in excess of authority, principal must affirm or repudiate it in its entirety, 117 C 58
who is "presiding officer" within meaning of statute de service of process, 125 C 494
president of corporation bound by virtue of office to protect its best interests, 125 C 651
——where he attempted to drive corporation out of business and establish son in competing business he was not entitled to salary, 125 C 651
agent of corporate depositor *held* to have authority to draw funds from bank, and waiver of by-law requiring presentation of deposit book was an incident, 128 C 511
——as secretary and treasurer, he had power prima facie to do any act which directors or trustees could authorize and ratify, 128 C 518

§ 4. Directors

general powers of directors do not enable them to apply to General Assembly for enlargement of company's powers, 2 C 583
——special authority required for that purpose, 2 C 584
directors liable by charter for withdrawal of capital stock, 10 C 404
——for delusive fraudulent payment of capital stock, 10 C 405
——certain acts *held* to amount to a withdrawal of capital, 10 C 406
duty of directors to call in instalments if needed for debts, 16 C 601
——this duty not discretionary, 16 C 601
——equity will enforce this duty in behalf of creditors, 16 C 601
——mandamus *held* upon the facts to be an inadequate remedy, 16 C 601
private agreement by directors de their own compensation for guaranteeing company's debts, is not binding on company, 22 C 358
record of directors' proceedings is not necessary to their validity, 24 C 601
——whether such requirement of by-law or charter be not merely directory, quaere, 24 C 601
minority of directors being stockholders may maintain bill against the majority for fraudulent combination, 25 C 177
——equitable relief is the appropriate remedy, 25 C 179
——not necessary that company, if made a party, should sue, 25 C 177
knowledge of directors acting officially or as agents under special authority is knowledge of corporation, 26 C 383
directors are agents of company, and liable only to it, 26 C 461
director while acting merely as such is entitled to no compensation, 27 C 180

——extra, unofficial labor may in cases be rewarded, 27 C 180
——exertions in obtaining subscriptions to stock are no ground of reward, 27 C 180
——grant by railroad company of free pass for life is void, 27 C 180
that stock note was assigned by directors to some of themselves is no defense in action on note, 28 C 410
duties of directors and officers to stockholders and the public stated, 30 C 229
directors *held* liable for permitting false statements to be made officially, 30 C 372
——no excuse that they acted officially, 30 C 373
generally knowledge of directors is that of corporation, 30 C 391
——often inferred from circumstances, 30 C 391
after merger under Connecticut law the Connecticut charter governs as to quorum, 30 C 577
directors borrowing all the funds; bonus; fraudulent agreement; waiver, 32 C 545
corporation and directors are trustees for stockholders, 33 C 446
equity will not interfere where directors in the exercise of reasonable discretion carry earnings to surplus account instead of declaring dividends, 33 C 446
corporation and directors may be called into equity for what reasons, 33 C 456
——rights of minority protected in equity, 42 C 26
notice to director is not notice to company, under what circumstances, 42 C 480
personal liability for willful neglect; "debt contracted" means one to which company was a party, 44 C 48
——judgment on scire facias against company, not such a debt, 44 C 48
——if such judgment be a "security" within statute, remedy is in equity, 44 C 50
under statute, law does not require vacancies to be filled before remaining directors can act, 55 C 464
——unless the number left is not a legal quorum, 55 C 464
statute de quorum not affected by act de assignments by company, 55 C 465
——a majority of directors may make a valid assignment in insolvency, 55 C 465
under statute a secretary, treasurer and manager of bank holding stock of company may be a director in such joint stock company, 55 C 465
cannot use official positions for purposes hostile to company, 58 C 444
——assault in protecting papers against such hostile purpose *held* justifiable, 58 C 444
construction and traffic contracts made by railroad directors for their personal gain as members of a syndicate *held* illegal, 60 C 567, 572, 573, 581
——ratification and execution of such contracts and use of railroad bonds for such purpose restrained by injunction, 60 C 567
——vote of directors pending suit disavowing any illegal intent and that contracts bore such construction, *held* unavailing, 60 C 567
director assenting to and voting for illegal contract is not necessarily estopped as a stockholder from afterwards claiming contract to be illegal, 60 C 575
——a locus penitentiae may be accorded him, 60 C 575
directors hold a fiduciary relation to the corporation, 60 C 581, 61 C 137
contracts made by a majority of the directors, who were also the only salaried officers, with themselves for a term of years, *held* on circumstances voidable by company, 61 C 137
——does not affect that there were three separate votes since it was the same as one vote, 61 C 136
——the three directors acting as a majority to secure advantageous contracts with the company, 61 C 137
the utmost good faith is required of directors in the exercise of their power, 61 C 138
contracts made by directors for their own benefit are generally only voidable, 61 C 142
——if nothing is done to avoid them the contracts stand; much more if ratified, 61 C 142
conversation with one of three directors of company, authorizing work, *held* under the circumstances admissible, 62 C 169
——where director apparently acted officially and company received benefit of work, 62 C 174
directors who sign certificate of incorporation are estopped to deny its recitals, 69 C 9
directors cannot give away rights of corporation by ratifying acts of agent, 74 C 353
director of insurance company under its charter is a trustee, 74 C 357
powers and liabilities of directors; investments, 75 C 555
director is agent when, 75 C 555
amending by-laws as to number of directors; shortening terms of those in office; electing additional ones at once, 75 C 669
nature of office of director; power as to policy of corporation, 75 C 672
liability of directors for fraudulent appropriation of assets, 78 C 600
——for fraudulent diversion of assets to pay dividends; for over-valuation of assets taken for stock; advertising as an asset, 77 C 473

power of directors on dissolution of corporation by quo warranto, 81 C 466
duty of director of banking corporations, 82 C 8
director unlawfully applying funds of company is guilty of constructive fraud; must refund to trustee in bankruptcy, 82 C 559
——liability of director who knowingly withdraws funds to adjust equities between subscribers, 82 C 559
director must be a bona fide owner of stock; have equitable as well as legal title, 87 C 602
creditor of director not interested in director's being bona fide owner of stock; company and public only ones wronged, 87 C 602
contract signed by directors without indicating they were authorized or were acting as agents is, upon its face, their individual contract, 88 C 383, 385
in action by receiver against directors for negligent management, bank is presumed to know of their acts, 89 C 451
where directors voted to sell "machinery," conveyance of "equipment" is thereby limited, 91 C 272
directors may accept services performed in organizing corporation and vote stock in payment, 92 C 266
director occupies position of trust; cannot use it for personal gain; his contracts voidable, not void; must act in good faith, 94 C 384
burden on director to show he acted in good faith, fairly, and that his acts were fully understood, 94 C 384
that company received a benefit from director's acts is not a decisive test of its fairness, 94 C 384
privileges and duties of a "life director" in Norwalk Hospital Association; charter construed, 99 C 472
——no distinction between life and elected directors under charter, 99 C 472
——remedy, if one were needed, could be effected merely by changing articles, 99 C 473
position of directors is one of great trust and confidence, 104 C 683
director's contract with corporation if he does not participate in action of board in making it is good if it is fair and equitable, 104 C 683
——if he does participate it is voidable at election of interested parties without regard to its fairness, 104 C 683
——such contracts may be authorized by all stockholders before made or ratified after, 104 C 684
——so stockholders by consenting and participating in benefits may be estopped to object, 104 C 684
——but where contract calls for recurring payments consent may be withdrawn and estoppel ceases as to future ones, 104 C 684
——contract by which directors received weekly payments without regard to earnings or debts of corporation is void, 104 C 684
——cannot be made effectual by ratification or estoppel, 104 C 684
——upon disavowal of contract directors entitled to retain reasonable compensation for services, 104 C 691
contract with directors made by their own votes voidable at option of interested parties, 108 C 567
——vote for payments to directors of salaries without regard to earnings of corporation as withdrawal of corporate assets in guise of compensation, 108 C 567
——in action by stockholders against directors in such a case, holding of court that they must return all in excess of reasonable compensation not interference with internal management of corporation, 108 C 567
——holding as to what was reasonable compensation upheld, 108 C 567
change of corporation's product to basis of lower quality and price is question of business policy for directors, 113 C 636
——assent of stockholders unnecessary, 113 C 636
removal of plant to Detroit may be made by directors without assent of stockholders, though corporation is "located" here, 113 C 636
directors or stockholders who bring about illegal transfer of assets are guilty of tort and may be held accountable for loss suffered by minority stockholder, 123 C 632
——nature of wrong being ex delicto any person who actively or knowingly participated may be held equally liable, 123 C 632
what directors know regarding matters affecting corporation's interests, corporation knows; knowledge of directors may be inferred from circumstances, 129 C 471
no basis in record for conclusion that failure of director of corporation who procured lease of its theaters to disclose other offers to stockholders caused latter any damage, 129 C 674
director entrusted with procuring lessee for corporation's theaters committed breach of duty in not disclosing to stockholders that he was to be part owner of lease with lessee, 129 C 674
director and officer of corporation occupies fiduciary relationship to corporation and stockholders, but he is not trustee in strict sense of term, 129 C 674
misconduct of director of corporation not such that he should be treated as if he had violated terms of express trust, with respect to Statute of Limitations, 129 C 674

duty of director in dealing with corporation to make full and frank disclosure; extent to which duty will be affected by failure of party adversely interested to pursue inquiries is very limited, 129 C 679

——whether director of corporation fulfilled this duty because he disclosed sufficient facts to stockholders to put them upon notice and inquiry of other offers to lease which he had received, quaere, 129 C 679

§ 5. Stockholders

§ 6. ——Generally

majority of stockholders cannot sell property of company to themselves as individuals, 8 C 157

rights and liabilities of stockholder of building association not affected because he joined to secure loan, 24 C 158

public, official statement unknown to stockholder will not affect him, 30 C 226

——fraudulent or negligent ignorance may, however, estop him, 30 C 227

one having right to vote as stockholder is eligible to any office which stockholder may hold, 42 C 569

——other stockholders have no interest as to whether bankrupt stockholder or his assignee shall vote, 42 C 569

stockholder's right to maintain bill against one injuring company, depends upon what, 42 C 589

——creditors of company stand on different ground, 42 C 589

stockholders are supposed to know provisions of charter, 52 C 100

not even all the stockholders can divest company of its assets and take same themselves, 54 C 412

stockholders presumed to know of acts of stockholders' meetings, 64 C 405

estoppel by one promoting corporation, etc., to set up irregularities in organization in defense to action on subscription, 66 C 9

acts of stockholders as acts of corporation, 69 C 330, 77 C 92, 82 C 220

right of State to bar or condition holding of stock by alien, 70 C 590

receipt of dividends estops one to set up irregularity, 72 C 658, 73 C 377

acquiescence in irregularity in issuing stock as estopping stockholder to set up that irregularity, 72 C 665

equality of privilege between resident and nonresident stockholder, 73 C 276

rights and liabilities as determined by law of State of incorporation, 73 C 377, 78 C 590, 79 C 163

statements on margin of stock certificate as entering into contract, 73 C 377

estoppel of, by judgment against corporation, 73 C 377, 79 C 186

admission of, not binding on corporation, 77 C 84

stockholders as the corporation, 77 C 92

relation of, to corporation as contract, 79 C 180

——is not impaired by change of creditors' remedy, 79 C 163

owner of all the stock of a corporation with no creditors owns all its property, 82 C 220

stockholders ordinarily give directions by majority vote of shares, 83 C 44

resignation of member of nonstock corporation takes effect when tendered, 88 C 332

acts of all the stockholders is the act of the corporation, 91 C 196

corporation as distinct from its stockholders, 97 C 301

certificate not essential to constitute one a stockholder, 100 C 61

——and his interest may be sold, subject to requirements of Statute of Frauds, 100 C 61

stockholder is not owner of property of corporation, 105 C 213

nature of stockholder's interest in assets of corporation, 106 C 19

§ 7. ——Rights

stockholder, if a creditor of company, is entitled to ordinary rights of set-off, 25 C 102

stockholder cannot sue directors at law for fraud and mismanagement, 26 C 460

when stockholder may maintain suit in equity against directors, 26 C 461

equity will relieve dissenting minority from ultra vires use of funds of, 33 C 455

suit by stockholder for dividend; receipt by all other stockholders estops plaintiff from claiming dividend was not earned, 34 C 543

what amendments are not binding on nonconsenting members, 38 C 71

advances to be repaid, "if company should become bankrupt," 41 C 503

——implies legal bankruptcy, not mere financial distress, 41 C 504

dividends legally declared belong to stockholders, 42 C 24

——directors cannot use same in company's business without stockholders' consent, 42 C 25

right of stockholders to enforce payment of dividend declared, 42 C 24

——enforceable though dividends have been invested by directors, 42 C 26, 28

——equity may compel directors to declare a dividend, 42 C 27

as to company, the person whose name is on the books is the stockholder, 42 C 568

——has right to vote on stock in his name, 42 C 568

——even though he be a bankrupt under United States laws, 42 C 569

have no proprietary interest in accumulated profits retained by company to protect capital, 50 C 75
——preferred stockholders usually entitled to dividends only from net profits or surplus, 54 C 157
assets constitute a trust fund, first for creditors, and lastly for stockholders, 54 C 412
facts *held* to justify court of equity in interfering with the internal and domestic affairs of company on stockholders' application, 60 C 573
the right to vote is an incident to the ownership of stock and cannot exist apart from it, 60 C 577, 579
——a surrender of this right for a term of years is contrary to public policy, 60 C 578
——each stockholder owes a duty to his fellow stockholders; this duty stated, 60 C 579
it is no answer to owner's demand for the permission and use of his stock to say that he intends to devote it to an illegal purpose, 60 C 588
——the law will doubtless afford a remedy if the illegal proceedings feared are undertaken, 60 C 588
do not become separate owners of any part until the sum is set aside by the management by declaring dividend, 62 C 70
——courts will not interfere in absence of fraud to compel dividends at the instances of a minority interest, 62 C 70
power of majority; amending by-laws as to number of directors and time of meetings, 75 C 669
contribution between, where some pay more than their share of common burden, 78 C 598
rights of members where two States unite to form new company from old ones, 82 C 85
shareholder can be forced out, but not into another company, 82 C 86
stockholders own all the property if there are no creditors, 82 C 220
majority of stockholders may accept amendment containing powers they could accept; cannot as to other matters, 84 C 276
right of the majority to rule is implied in the contracts that the shareholders enter into, 84 C 276
acceptance of bequest of stock creates contract between company and legatee with all the rights and liabilities of stockholders, 86 C 462
stockholder can examine books without giving reasons; mandamus, 87 C 483, 90 C 638
legal title to stock may be in A, equitable title in B; creditor of A can take stock only if he had relied on legal title, 87 C 601
real owner of stock not estopped from asserting rights against creditor who had not relied on legal title, 87 C 601
minority stockholders should ask officers to desist from waste before bringing action, 87 C 656
——if occasion is urgent, acts willful, and request would undoubtedly be refused, court will act without it, 87 C 656
stockholder has no legal title to company assets until pro rata distribution on dissolution, 90 C 342
assets belong to company, not to stockholders, until after debts paid, 90 C 343
right to inspect books of foreign company in this State contrary to laws of foreign State; mandamus; procedure, 90 C 638
estoppel of corporation from denying recognition of a member on dissolution, 91 C 537
vote of stockholders to issue stock only for cash as limiting directors' powers, 92 C 266
right of stockholders to bring action in behalf of corporation where directors refuse, 97 C 301
——cannot individually sue for injury to its business, though they own substantially all the corporate stock, 97 C 301
stockholder may authorize, ratify, or be estopped to attack, voidable contract between corporation and its directors, 104 C 683
estoppel of stockholder to attack voidable contract may cease when he withdraws consent to its continuance, 104 C 683
equity will not interfere with proper management of corporate affairs at suit of minority stockholders, 108 C 567
minority stockholders may get equitable protection against payments made under voidable contract or under void vote of directors, 108 C 567
when earnings have been separated from principal by proper authority they become property of stockholder, 109 C 268
corporation was "located and established" in Bridgeport; *held* removal of plant to Detroit not prohibited by statute or charter, 113 C 636
——fundamental change in legal plan not involved and assent of all stockholders not required, 113 C 636
——not change of location requiring assent of two-thirds of stockholders, 113 C 636
change of corporation's product to basis of lower quality and price is question of business policy for directors, 113 C 636
——assent of stockholders unnecessary, 113 C 636
courts of equity at instance of stockholder may intervene by injunction to prevent violation of corporate charter or dissipation of assets, 113 C 636
building new plant in Detroit *held* not waste of assets and objecting stockholders not entitled to injunction, 113 C 636

title will not pass under a deed executed by a stockholder of corporation, as such, 114 C 39
stockholder has right to examine books and records at reasonable times, provided purpose is germane to interest as stockholder, proper and lawful in character, and not inimical to interests of corporation, 120 C 330
——right of inspection necessarily includes access to information as to identity of other stockholders, 120 C 330
precedents as to right of bondholders to secure from corporation names of fellow bondholders are few and inconclusive, 120 C 331
plaintiff as owner of ten shares in M Company and holder of 1480 shares certificates of which were delivered him as security for loan to M Company sued for loss of value of this stock by reason of unlawful transfer of assets of M Company to T Company, 123 C 631
——fact that there was default in payment of loan did not give plaintiff ownership of 1480 shares but only right to realize on them by appropriate proceedings, 123 C 632
——as he never had stock transferred to him he was not entitled to notice of meeting by reason of ownership of these shares, 123 C 632
where corporation files voluntary petition seeking reorganization under § 77B of Bankruptcy Act, which involves transfer of its assets as distinguished from transfer by order of court after confirmation of plan, proceeding must be authorized by directors and stockholders at meeting duly called, 123 C 632
where no meeting of stockholders or directors called to pass on plan for reorganization or of authorizing transfer of assets, *held* plaintiff entitled to recover as owner of ten shares, 123 C 632
where all assets of corporation are turned over to another corporation to carry on its business, every stockholder has right to share in fruits of reorganization; that stockholder has only few shares no ground to refuse him relief, 123 C 632
——remedies of stockholder who has been deprived of that right discussed, 123 C 642

§ 8. ——Liabilities

stockholder not liable in scire facias on judgment against corporation, 3 C 56
——though individually liable for debts by charter, 3 C 56
——in such case the liability is original, 3 C 56
members are not as a rule individually liable for debts of, 3 C 139
unlimited liability of members; transfer of stock; liability attaches to whom, 5 C 63
individual liability for debts of company by charter, 10 C 414
——distributees of estate are not bound to accept the stock and incur liability, 10 C 416
estate of member of private, voluntary company is not liable on execution against it, 16 C 515
member of association acting as company, estopped to deny its valid existence on foreclosure against him, 27 C 289, 293
stockholder of Minnesota bank sued on his personal statutory liability, 33 C 529
——priority liability to bill holders is no defense, 33 C 530
——that bank is insolvent and in receiver's hands excuses suit against it, 33 C 531
facts insufficient to render stockholder liable as a partner, 47 C 444
——though company had not been legally organized, 47 C 444
stockholder selling capital stock in good faith to one buying for the company, *held* nevertheless liable to creditors of company, 52 C 100
——receivers are proper parties to recover for capital stock sold to company by its stockholders, 52 C 106
stockholder in de facto corporation not individually liable on contracts of corporation, 66 C 17
capital is a trust fund for creditors; stockholders receiving part of it where corporation is insolvent, accountable; purchase of stock by corporation, voidable when, 68 C 29
liability for withdrawing assets of insolvent corporation; substance, not form, of transaction controls, 68 C 29, 72 C 658
statutory liability in certain corporations; its nature; effect where stock is held as collateral; set-off; debt incurred before assignment of stock; liability in general, 68 C 522
corporation cannot release liability of stockholders as against creditors, but may compromise bona fide dispute, 73 C 480
where corporation cannot sell stock below par, purchaser for smaller sum liable to make up difference, 73 C 480
nature of obligation where statute imposes double liability, 79 C 172
equitable owners' property, subject to creditors' rights, 82 C 178
members who unite to form voting trust are liable to transfer agent employed who has a lien on their stock for expenses, 82 C 178
increase of shareholders' liability does not create a fundamental change, 84 C 277
liability on reduction of capital stock of company chartered under Act of 1880, 89 C 583

——liability only in joint stock corporations, 90 C 583
when one making contract for nonexisting company is liable as a partner, 89 C 633
good faith in giving and accepting property in full payment for stock, 94 C 551
where W company bought all property of E company and made payments directly to stockholders of latter who assigned stock to W company, judgment by creditor against stockholders and W company *held* erroneous as to latter, 101 C 713
——former estopped by retaining payments to claim agreement of sale invalid because of restriction as to president of E company going into competing business, 101 C 713
——such invalidity should have been pleaded, 101 C 713
——nor was plaintiff creditor estopped because he did not make stockholders parties to his action on debt against E company, 101 C 713
——provision in judgment that if stockholders fail to pay it, W company should, out of funds retained to meet subsequent claims against E company upheld, 101 C 713
agreement by officer and stockholder of corporation to return price of stock bought of it if buyer dissatisfied and surrendered it, *held* supported by defendant's official and financial interest in corporation, 109 C 597
K agreed with partner T to share all profits from outside transactions and then incorporated; *held* that shares received by K represented corpus and not ascertained profits, 113 C 449
——and T's assignee had no claim upon shares by way of trust or lien, 113 C 449
mortgagee did not acquire rights against stockholders on assumption agreement because of defects in organization; de facto corporation, 114 C 681
directors or stockholders who bring about illegal transfer of assets are guilty of tort and may be held accountable for loss suffered by minority stockholder, 123 C 632
——nature of wrong being ex delicto any person who actively or knowingly participated may be held equally liable, 123 C 632

§ 9. Capital Stock

§ 10. ——Generally

legal title to stock is in party in whose name it stands on books, 13 C 498, 42 C 568
stock takes a local character, 14 C 563
profits a part of stock until dividends declared, 26 C 272
——pass with the stock by contract, bequest, or levy, 26 C 272
how value of stock in building association determined; entry of value in bank book not conclusive, 28 C 305
parol agreement to pay in certain sum per share; sum credited; under agreement for lien, *held* company had lien, 41 C 266
——transfer to third person *held* not to affect, 41 C 266
the capital stock is a trust fund for repayment of debts, 52 C 95
——creditors have lien upon it prior to stockholders, 52 C 95
——*held* to apply to a trust company, 52 C 96
——cannot be paid back to stockholders to the prejudice of creditors, 52 C 98
——creditors may follow capital so paid into hands of stockholder, 52 C 100
——right does not depend on a conspiracy to defraud, 52 C 101
company cannot buy in its own stock except in special cases, 52 C 99
in foreign company owned by nonresidents, pledged here as collateral, is not subject to foreign attachment, 53 C 394
——not affected by fact that pledgee has power of sale, 53 C 395
——nor can ordinary attachment reach such stock, 53 C 393
situs of for purposes of attachment, 53 C 393
certificates of, not attachable, 53 C 396
equity in, when pledged, attached how, 53 C 397
——rights of pledgee in such case, 53 C 399
relation of certificates to stock, 53 C 396
capital stock defined, 53 C 395, 61 C 101
Legislature may authorize issue of preferred stock, 54 C 167
——special act *held* to authorize company to pay dividends on such issue, 54 C 164
——though common stock at the time was impaired, 54 C 164
preferred stock usually entitled to dividends only from net profits or surplus, 54 C 167
agreement that firm property should constitute capital of company at a certain valuation, *held* a capitalization of profits so far as they were included, 58 C 136
not unlawful for persons to buy and own the majority of the stock, 60 C 587
for purposes of taxation consists of what, 61 C 101
capital stock of corporation constitutes a trust fund for payment of debts, 68 C 29
lien of corporation for tax paid on stock of nonresident stockholder upheld, 70 C 590
stock of corporation which is being wound up in insolvency is a trust fund for payment of its debts, 72 C 658
right to issue stock for less than par, 73 C 485
what constitutes "capital," 77 C 552, 83 C 43
right to create and nature of preferred stock, 82 C 421

specially chartered corporation, authorized to increase its capital stock, may do so by a stock dividend, 83 C 43
what is capital stock, 83 C 43
capital stock irrevocably devoted to satisfy obligations of corporation, 83 C 43
for purpose of attachment situs of stock is where company is located, 84 C 618
statute de liability in reducing capital stock applies only to joint stock corporations, 89 C 583
no presumption that paid up capital represents existing assets, 94 C 65
stock certificate not a negotiable instrument nor negotiable document of title, 94 C 597, 609
receiving stock as collateral for existing debt without new consideration, not protected by estoppel, 94 C 597
purchaser in good faith of stock protected by estoppel, 94 C 607
no presumption that stock is worth par, 104 C 74
stock certificates are subject to succession tax at owner's domicil though kept in another State, 105 C 194
value of stock unlisted on exchange, how proved, 105 C 580
over-issue of stock beyond authorized amount is void, 106 C 41
contract to sell units of common and preferred stock is not severable but entire; purchaser entitled to rescind if corporation has no power to issue common stock, 106 C 41
attempt to control corporation by purchase of majority stock, not in itself improper, 106 C 218
contract to sell and transfer stock with agreement for repurchase construed as sale, 106 C 412
——secret understanding of parties disregarded, 106 C 412
corporate entity and shares of stockholders are in no way affected or changed by acquisition or surrender of some of corporate powers, 116 C 172
nature of capital stock in relation to creditors, 117 C 445
legislative sanction of issuance of no par stock, 125 C 353
agreements restricting sale of stock in corporation in order to assure a continuous and harmonious management are valid, 125 C 438

§ 11. ——Subscription and Payment

subscriber to capital stock is liable for unpaid installments, 12 C 507
——so also purchaser of original subscriber, 12 C 531, 16 C 598
parol conditions annexed to subscription cannot be shown, 13 C 173
subscription may be enforced after insolvency of corporation, 16 C 593
forfeiture of stock for nonpayment of subscription is a cumulative remedy, 20 C 186
purchaser of stock from trustees of company is a "subscriber," 20 C 187
——secret stipulation prejudicial to creditors is invalid, 20 C 186
by subscription to and allowance of stock one becomes a stockholder, 22 C 452
——as such is liable for installments as called for, 22 C 452
——that organization is still pending is no defense, 22 C 452
subscription to stock without its formal assignment may render subscriber liable, 22 C 453
instalments of stock as called are payable to treasurer, 22 C 454
court of equity may cancel subscriptions obtained by fraud and allow recovery of money paid thereon, 26 C 287
——but otherwise as to subscriber participating in fraud, 29 C 137
subscriber to stock cannot defend on ground that he was told he would never have to pay, 29 C 137
power of attorney to subscribe for stock empowers attorney to pay installments, 29 C 151
subscriber not liable on subscription to stock obtained by fraud, 29 C 386
irregularity in subscription *held* waived by subscriber acting as director, 30 C 576
effect of adding to subscription, "to be expended between A and B," 30 C 578
——not a condition precedent; but if so *held* waived by acting as director, 30 C 578
may accept note against firm to which indebted, in payment of stock subscription, 34 C 545
amendment to charter does not ordinarily affect stockholder's contract of subscription, 38 C 56
subscriber to stock cannot defend on ground that road was built before all stock was subscribed, when, 38 C 68
agreement of contractor to take stock as part payment *held* no subscription, 39 C 81
——within proviso of charter requiring subscriptions to a fixed amount before a call, 39 C 81
stock subscription conditioned on raising whole amount, is not repugnant to charter authorizing commencement on partial subscription, 43 C 94
——if made after organization, regarded as received by directors, 43 C 95
——and affected by agreement with directors, 43 C 95

"Willis Bristol Treasurer in trust, 120 shares, $12,000"; *held* on facts not to be an individual subscription, 49 C 271
——but one in behalf of the company and adopted and ratified by it, 49 C 271
to guaranty fund of insurance company *held* secured but not paid by pledge of securities, 50 C 226
——obligation *held* to be for payment in money, 50 C 227
——right of action accrued when demand for subscription was made by receiver of company, 50 C 227
——not at time of retransfer of securities, 50 C 227
——where company had retransferred securities to executor of subscriber, 50 C 224
suit to recover unpaid installments on capital stock; estoppel from participating in acts of corporation or receiving dividends to set up irregularities, 66 C 9, 72 C 658, 73 C 378
on insolvency, unpaid subscriptions constitute trust fund for creditors; de facto corporation, 66 C 18
stockholder liable to assessment till stock transferred; wrongful refusal of third party to accept transfer; refusal of secretary to record transfer, 71 C 50
subscription by one as "trustee" for corporation; personal liability; estoppel from certifying as to subscriptions, 71 C 207
action and call on subscription by trustee in insolvency, 71 C 218
good-will of partnership to which corporation succeeds and advertisement at World's Fair as property to be taken in payment of stock subscription, 72 C 118
to rescind subscription for fraud, 72 C 658
——prompt action requisite, 74 C 265
subscription providing that liability be at an end when stock is issued or all capital is subscribed valid, 73 C 378
liability of a stockholder to respond to calls upon his shares is an asset which the receiver can sell and the purchaser collect by suit, 73 C 379
liability to corporation, receiver, and creditors for unpaid subscriptions, 73 C 388, 78 C 592
——procedure to recover such subscription, 78 C 592
purchaser of originally issued shares virtually a subscriber, 73 C 480
right of stockholder to return stock purchased on condition, 73 C 480
bad faith of other incorporators does not justify rescission of subscription, 73 C 513
liability to assessment to pay debts of corporation; law of State of incorporation governs; varying mode of enforcement after subscription, 79 C 163
assessment illegal in including improper items must fall; including future expenses of collection, 79 C 164
conclusiveness of order of State of incorporation in insolvency proceedings as to payment of assessments, 79 C 186
creditors' rights where stock issued, as fully paid, is only partially paid, 82 C 422
if corporation papers provide for taking its stock as payment for goods bought, all creditors are bound by the provision, 82 C 422
funds cannot be withdrawn to adjust equities between subscribers, 82 C 559
purpose of provision requiring stock to be paid in full, 83 C 43
"subscriber" taken to mean every shareholder no matter how he became such, 83 C 44
wife married in 1872 may be liable for assessment on stock inherited, 86 C 468
promise to take all stock not sold by broker is conditioned on broker's making reasonable effort, 87 C 138
no estoppel against one who promises to take stock not sold where result was gain to the company in procuring other subscriptions, 87 C 138
subscription to stock of existing company when accepted makes subscriber liable to calls, 87 C 138
promise to take all stock not sold, not a subscription, but may be a valid obligation, 87 C 138
directors cannot by vote override vote of stockholders that no stock be issued except for cash, 92 C 266
——where shares issued for services, validity of issuance recognized by suit to recover par value of the stock, 92 C 266
——compliance with vote of stockholders waived, 92 C 266
where stock issued for other than cash, failure of directors to record that fact raises no presumption it was issued for cash, 92 C 266
stock certificate in name of holder and held by him raises a presumption of promise to pay cash for it, 92 C 267
by California law transferee of stock liable to creditors same as original holder, 94 C 551
contract and liability of a subscriber to stock defined, 101 C 291
subscription rights are assignable, transfer being effective as novation when accepted by corporation, 101 C 291
——acceptance by recognition and acquiescence; no formal vote necessary, nor assent of all other subscribers, nor compliance with provisions of by-laws de transfer of stock certificate, 101 C 291

assignor in good faith of subscription in solvent corporation not liable to subsequent creditors of corporation even though assignee financially irresponsible, 101 C 291
——this rule not altered by statute, 101 C 291
assignor of stock subscription not responsible for fraudulent scheme by which assignee was to be paid amount he paid for assignment from proceeds of bonds to be issued by corporation, 101 C 291
liability of original subscriber for debts existing when assignment was made, 101 C 305
right of corporation to refuse to recognize assignment was made, 101 C 306
subscribers become at once liable for full amount of subscription and in absence of agreement may at any time tender balance and demand certificate, 104 C 684
——corporation entitled to hold certificate until full payment is made, 104 C 684
——where subscribers who have paid only in part and who thereafter act as managing directors, receiving full payment for their services, issuance of full paid stock in consideration of past services is invalid for want of consideration, 104 C 684
——proper decree in such a case, 104 C 684
in action for corporate receiver, judgment for collection of unpaid stock subscriptions should run against the corporation, not the subscribers, 104 C 684
effect of omission to file certificate where change from par to no par stock, 106 C 54
——failure to comply with statute empowers subscriber to avoid subscription contracts and recover money paid unless guilty of laches, 106 C 54
only directors or receiver can make "call" on stock subscriptions; incorporators cannot, 107 C 216
——ordinarily "call" is condition precedent to subscriber's obligation, 107 C 216
——but equity recognizes direct obligation to creditors and will treat them as real parties in interest, to amount of subscription, 107 C 216
——subscription made before organization is valid and irrevocable contract, consideration for which is promise to furnish stock when organization completed, 107 C 216
——if consideration fails by abandonment of enterprise, no recovery on subscription or note given for it, 107 C 216
——but subscriber may be liable for his portion of debts incurred on principles of agency, 107 C 217
——and receiver may enforce obligation, 107 C 217
obligation of subscriber to pay par value as called for by directors, 113 C 125
——right of subscriber to pay at any time with consent of corporation, 113 C 125
——to agree with a third party that it would pay at certain times and in certain amounts, 113 C 125
claim by receiver of corporation for unpaid stock subscription is equitable not legal and jury trial is not matter of right but rests in discretion of court, 117 C 445
——fund is one applicable to payment of corporate creditors; is trust fund for their benefit, 117 C 445
agreement whereby cash received for capital stock subscribed for by others, would be credited to balance due from certain subscriber, *held* fraud on creditors and not binding on receiver who represents them, 117 C 445
——creditors entitled to rely on subscription as part of capital assets, 117 C 445
stockholders are liable on unpaid subscriptions to extent necessary to pay corporate debts, 117 C 454

§ 12. ——Transfer of Shares

transfer is invalid unless made in conformity to by-laws, 2 C 579, 3 C 544, 5 C 246, 6 C 552, 13 C 493
written assignment in pais and registered on books is a transfer on books, 5 C 251
transfer according to the only practice followed is valid as against company, 9 C 493
——though not according to by-law, 9 C 493
general assignment by stockholder gives trustee an equitable title, subject to corporation's lien for stockholder's debt, 26 C 144
ownership of stock is properly determined by company's books only, 29 C 253
——power of attorney to transfer does not defeat attachment made before actual transfer on books, 29 C 253
pledgee to acquire lien must actually transfer stock or notify company, 29 C 253
executory agreement de transfer is liable to be defeated by attachment of stock, 29 C 253
over-issue of stock by fraudulent agent; refusal to allow transfer, 30 C 267
——peculiar circumstances may justify the refusal, 30 C 272
power to transfer stock; attorney's name afterwards inserted by vendee, 30 C 273
——insertion valid by New York law; especially as the transfer was to be made there, 30 C 275
transfer to be in mode prescribed by statute or charter, 31 C 35
ground on which stock sold but not transferred is open to attachment as vendor's, 31 C 36
——badge of fraud rebuttable, 31 C 36

refusal to permit transfer on books; written assignment *held* good in equity against later attachment, 31 C 36

no transfer of stock on the books or notice to company; priority of lien in favor of company, 41 C 264, 45 C 22

provision in charter or by-laws of company that stock is only transferable at office, etc., affects only legal title, 50 C 488

——beneficial interest may be transferred by any agreement between parties, 50 C 489

assignor retaining legal title becomes trustee for assignee, 50 C 489

delivery of certificates with remark "this Aetna stock of yours is good stock," *held* under circumstances a declaration of trust, 50 C 490

delivery of certificate with intention to vest right of property in donee will be good in equity, 50 C 490

——especially if accompanied by a declaration of trust, 50 C 490

——such a trust not invalid as against Statute of Frauds, 50 C 491

delivery of certificates with blank power of sale how far a good delivery, 53 C 398

pledge of, does not draw stock from location of company and domicil of general owner, 53 C 399

mandamus does not lie to compel secretary of company to allow stock transfer and to issue a certificate therefor, 54 C 275

transferee *held* not entitled, on the facts, to a certificate for shares mistakenly issued by company to transferor, 63 C 144

agreement to bequeath stock; requires unconditional bequest; rights of widow of promisor, 68 C 91

until transfer actually made, legal title and the legal rights and liabilities of the stockholder of record remain unchanged, 71 C 50

secretary may refuse to record if transferee refuses to accept stock, 71 C 50

specific performance of contract to bequeath controlling interest, 74 C 294

stockholder can transfer bare legal title and keep equitable title, 87 C 601

transfer of stock on books of a corporation is not matter of general knowledge, 87 C 602

registration of stock not a transfer; no presumption of fraud by continuing title on books in one name and beneficial title in another, 87 C 602

when there is a legal transfer of stock, 90 C 342

equitable title to stock is in transferee on delivery and acceptance of certificate with intention to transfer with or without power of attorney, 90 C 342

share of stock is personal property; if worth more than $100 comes within Statute of Frauds, 90 C 342

creditor and purchaser not affected by symbolic or constructive acceptance and receipt of stock certificate, 90 C 343

when bona fide purchaser of stock certificate protected at common law, 94 C 607

effect of delivery of certificate as collateral without transfer with power of attorney, 94 C 612

stock pledged to secure loan leaves equity in owner, which is subject to attachment, 95 C 713

effect of unrecorded transfer of stock, 97 C 371

rights of trustee in corporate stock of bankrupt; trustee not entitled to notice of meeting unless he has certificates transferred; bankrupt may vote stock in his name, 111 C 475

steps necessary to vest stock and effect of failure to take them determined by local law, 111 C 477

——steps necessary to transfer stock by our law, 111 C 477

——right of person appearing as stockholder on books to vote stock, 111 C 478

where certificate indorsed by one not owner and without his authority is transferred on books, the corporation is liable, 114 C 172

——as where wife signed husband's name to certificate, 114 C 172

——husband not charged with negligence because certificate was where wife had access to it and his confidence in her made her conduct possible, 114 C 172

if officers are in doubt as to proper signature of certificates or power accompanying it, they may refuse transfer until proper proof is made, 114 C 180

duty of corporation transferring stock to ascertain if indorsement is by owner or duly authorized agent; otherwise is liable to restore it to owner, 114 C 180

delivery of stock certificate made out to specified person passes title to him, 114 C 603

gift of stock *held* complete where certificate was delivered to donees but was thereafter redelivered to donor's attorney as security for an agreement by donees not to alienate it during donor's life, 114 C 603

one who loans money to corporation and receives certificates of stock as security not entitled to notice of meetings when he has not had stock transferred to his name, though loan be in default, 123 C 632

transfer of corporate stock to his name by pledgee does not constitute conversion; where shares of its own stock were pledged with corporation and it took over shares as treasury stock and notified plaintiff, there

was no such unauthorized dominion as would constitute conversion, 124 C 201
——plaintiff could not recover without showing demand for return of stock accompanied by offer to pay indebtedness and refusal of defendant to deliver, 124 C 201

§ 13. ——Dividends and Surplus

surplus to be ascertained from actual working, not nominal, capital, 33 C 457
suit by stockholder for dividends; receipt by all other stockholders estops plaintiff from claiming that dividend was not earned, 34 C 542
dividends legally declared belong to stockholders, 42 C 25
——directors cannot use same in company's business without stockholders' consent, 42 C 27
equity may compel directors to declare a dividend, 42 C 27
——though dividends have been invested by directors, 42 C 28
guaranty fund to meet claims; dividend from it *held* illegal and void, 49 C 273
shareholder has no proprietary interest in accumulated profits retained by company to protect capital, 50 C 75
impairment of capital prior to issue of preferred stock *held* not to prevent dividends on such stock, 54 C 156
preferred stock usually entitled to, only from net profits or surplus, 54 C 167
"net earnings" defined, 54 C 168
——net profits or surplus cannot ordinarily exist while capital is impaired, 54 C 167
company not allowed to distribute its capital to stockholders as dividends, 54 C 169
assets constitute a trust fund, first for creditors, and lastly for stockholders, 54 C 412
undivided earnings belong to company, 62 C 67
——shareholders do not become separate owners of any part until the sum is set aside by the management by declaring dividends, 62 C 70
——courts will not interfere in absence of fraud to compel dividends at the instance of a minority interest, 62 C 70
dividend, unqualified, signifies dividend payable in money, 62 C 68
stock issued in settlement of arrears of guaranteed dividends not a dividend, as to creditors; issuance to widow, who is executrix as well, of stockholder, where she has life use, 64 C 5
dividends to policyholders in mutual company can be made only from surplus, 70 C 647
dividend even on preferred stock can be declared only out of profits, 72 C 118, 81 C 528
recovery by receiver of dividends wrongfully paid; effect and evidence of insolvency of corporation, 72 C 118, 77 C 473
right of member to dividend only matures when it is declared; and this rests in discretion of directors, 73 C 114, 77 C 554, 78 C 75, 532, 79 C 639
dividend received after death of life tenant not apportionable in favor of his estate, 73 C 114
unappropriated earnings not capital till stock issued to represent them, 77 C 543
after declaration, right to dividend vests, and is assignable, 78 C 75
on reduction of capital, charging off and setting aside certain doubtful assets *held* equivalent to dividend, 78 C 75
it is presumed to have been paid from profits, 78 C 457
cash dividends generally go to beneficiary under the trust, 81 C 510, 85 C 452
stock dividend is part of the principal of the trust, 81 C 510, 85 C 452
cash dividend defined, 81 C 510
declared dividend is a debt, 81 C 528
dividend on preferred stock can be declared only out of profits, 81 C 528
capital stock may be increased by stock dividend, 83 C 43
nature of stock dividend, 83 C 43
cash dividend means all dividends whether cash or property taken from body of assets to become property of shareholders, 85 C 452
capital may not be impaired by distribution of dividends to shareholders; surplus may be, 85 C 452
stock dividend is issue of new stock based on transfer of surplus assets to capital, 85 C 452
distribution of shares of another corporation as a cash dividend, 85 C 452
effect of declaration of dividends and rights of stockholders thereon, 97 C 366
dividends may be payable at future date to stockholders of record at intermediate date, 97 C 367
——interim purchaser entitled to dividends although shares not transferred on books, 97 C 371
dividends may only be declared out of profits; attempts to circumvent this to be closely scrutinized, 104 C 692
when a stock dividend may be declared; effect, 106 C 20
specific legacies of stock do not carry stock dividends declared before death of testator unless so intended, 106 C 20
dividend in stock of another corporation is same as cash dividend, 106 C 20
acceptance of dividend checks by subscriber to stock *held* not to estop her from denying

power of corporation to issue the stock, 106 C 41
no claim may be made on dividend until declared, 108 C 433
identity between estate and holding corporation through which executors conduct business, 108 C 434
declaration of dividend must be interpreted and given effect intended by directors, 109 C 268
before dividend declared right of stockholder to share in earnings passes with stock when sold, 109 C 268
after declaration dividend belongs to stockholder and does not pass by sale of stock, 109 C 268
declaration of dividend creates debt against corporation in favor of stockholder, 109 C 268
separation of earnings from assets is authorized and controlled exclusively by law of corporate domicil, 109 C 268
under law of New York dividend declared payable to stockholders of record on certain day belongs to owner of stock on date of declaration, 109 C 268
——purpose of provision to protect corporation and does not affect title to dividend, 109 C 268
——our law governs rights as between trustee and beneficiaries here, 109 C 268
——as life tenant is entitled to earnings by our law, dividends declared by New York corporation during his life go to him or his estate, 109 C 268
a cash dividend includes all distributions of surplus assets, whether in form of cash or property, 110 C 151
dividends are to be regarded as income, except when rule yields to exceptional circumstances, 110 C 150
distribution of stock of L company to stockholders of R company in consideration of R company transferring bonds in surplus to L company, *held* to be a dividend, 110 C 151
——effect was to divest R company of all control over or interest in bonds, 110 C 151
——effect was not mere reorganization, 110 C 151
implied right of corporation without capital stock to make individual distribution of profits to members, 111 C 207, 115 C 136
——statement of purpose for which organized is not a limitation upon that right, 111 C 207
test of what is stock dividend and what is cash dividend, 111 C 325
——beneficiary of income entitled to latter, trust fund to former, 111 C 325
distribution of stock accompanied by conversion of surplus into strict capital and no change of stockholder's proportionate ownership *held* stock dividend, 111 C 325
exceptions in statute declaring that stock dividend belongs to trust fund; declaration that same paid from earnings since formation of trust must be made by directors or authorized by corporation, 111 C 325
unauthorized letter of president not such corporate action as under statutes determines right of life tenant to stock dividend, 111 C 334
if dividend is made payable to stockholders of record on certain day, a debt to them arises, 127 C 675
statutory provision that stock dividends shall belong to principal of trust except where corporation expressly declares them to be made from earnings since formation of trust, 128 C 426
——statute applies unless express statement is embodied in resolution of directors or is made by some other formal action, 128 C 426
——contention of life tenant that action of directors, in connection with published financial reports, amounted to express declaration, without merit, 128 C 426

§ 14. Rights and Powers; Ultra Vires

discount of notes by insurance company *held* to be ultra vires, 5 C 567, 578
have only rights and powers expressly granted, 5 C 568, 9 C 180, 22 C 555, 28 C 64, 34 C 541, 61 C 129
——including powers necessary to the use of those granted, 5 C 568, 9 C 180, 22 C 555, 28 C 64, 34 C 541
specific grant of powers is implied prohibition of other powers, 5 C 572
insolvency does not convert effects of, into trust fund for creditors, 6 C 242, 25 C 101
may prefer creditors, 6 C 242
can act only in mode prescribed in charter, 13 C 260
no recovery by, for breach of contract ultra vires, 13 C 260
Legislature may empower city to subscribe to stock of, 15 C 498
derive all powers from Legislature, 15 C 501
public corporation empowered to loan may issue bonds, 15 C 502
may exercise powers within fair intent and purpose of their creation, 15 C 502
power to pay 6 per cent per annum is power to pay 3 per cent semi-annually, 15 C 503
power of quasi public corporation to bring suit to protect individual rights, 20 C 478
railroad company cannot contract to carry beyond its terminus without special authority, 22 C 17, 508
——company not estopped from denying liability on such contract, 22 C 17, 508

——even though stockholders assent to contract, 22 C 508
not estopped to set up ultra vires in equity, 23 C 622
company organized to do insurance agency, commission and brokerage business has no power to subscribe to stock of building association, 24 C 164
——though to secure loan, and authorized to to borrow on mortgages, 24 C 164
"permission to contract with any other railroad company," is no power to contract beyond termini, 24 C 482
resolution of common council giving exclusive right to lay pipes in street is not a grant of property, 25 C 31
——but is a license protecting company from prosecution for a public nuisance, 25 C 32
mere insolvency does not impair powers of, 25 C 100
firm organizing as, may buy stock, tools, etc., of firm, and assume its debts in payment, 26 C 108
——consent of all creditors *held* waived when, 26 C 109
lien on stock expressed in stock certificate *held* valid, 26 C 154
——though not expressed in charter nor directly by law, 26 C 154
——and though statute prohibit loan on pledge of stock, 26 C 157
insurance company has power to establish guaranty fund by votes of stockholders, 28 C 62
bequest in trust; act creating corporation to use fund; charter, 31 C 242
——power "to receive, hold and manage fund" is power to sue for it, 31 C 242
——rights of company not affected by fact of its nonexistence when bequest was made, 31 C 242
——company might leave fund in hands of respondent and demand only the interest, 31 C 242
what ecclesiastical society can lawfully do may be done by a majority, 33 C 402
equity will relieve dissenting minority from ultra vires use of funds of company, 33 C 455
intent in leasing is material as to doctrine of ultra vires, 34 C 541
——purchase or lease for malicious purpose is ultra vires, 34 C 541
——may be shown in defense of action by, 34 C 542
what books may be kept out of this State under joint stock law, 35 C 40
——literal compliance with statute is not required, 35 C 42
wrongful appropriation of name of another corporation enjoined, 37 C 278
discretionary statutory powers to be exercised without injury to legal rights of others, 37 C 293
powers necessary to perform a public duty imposed are impliedly given, 38 C 53
guaranty by water board to furnish boarders as inducement to build boarding house is not ultra vires, 38 C 216
capacity of foreign corporation to take by devise in this State is determined by its charter and the laws of this State, 38 C 359
incidental loan by manufacturing company may be upheld in equity, 41 C 267
may sell all its property to a stockholder, when, 41 C 510
charters granting exclusive privileges are to be construed strictly as against corporation; liberally as to public, 42 C 202
bona fide transfer of property to directors for advances *held* proper, 47 C 54
——if made without fraudulent intent in fact the law does not infer it, 47 C 53
——though corporation may be in fact insolvent, 47 C 53
sale of entire property to rival company, for latter's stock; doctrine of ultra vires, 47 C 161
——such transaction *held* valid, qualifiedly, 47 C 161
ultra vires, how far applies to trading and manufacturing companies under joint stock laws, 47 C 163
may put its property in stockholder's hands, for what ends, 47 C 383
life insurance company has no power to indorse accommodation paper, 50 C 183
——or if it had, president on facts *held* to have no implied power to sign name for such purpose, 50 C 184
directors of manufacturing company have power to borrow money and give security to pay floating indebtedness, 50 C 600
——when necessary to enable company to go on with its business, 50 C 600
——though mortgage covers nearly all the property, 50 C 600
——and did not affect that directors were guarantors secured by the mortgage, 50 C 600
——company receiving money and paying debts could not claim that mortgage was invalid, 50 C 600
cannot pay back stock to stockholders to the prejudice of creditors, 52 C 98
cannot buy in its own stock except in special cases, 52 C 99, 100
——creditors may follow capital so paid out, into hands of stockholders, 52 C 100
defense of ultra vires as to accommodation acceptance of draft not open to company under what circumstances, 54 C 380, 387.
has power to deal in negotiable paper in the line of its business, 54 C 387

——but may become liable for accommodation draft to a bona fide holder for value without notice, 54 C 387
——persons dealing in negotiable paper of, are bound to take notice of the extent of its powers, 54 C 387
——but a distinction exists between the terms of a power and the circumstances of its exercise, 54 C 387
——especially where officer exercising power represents the company in giving the information as to the circumstances under which it is exercised, 54 C 387
manufacturing company has no right to loan its credit for the private purposes of its president, 54 C 400
——cannot acquire power simply by repeated exercise of it, 54 C 411
charter giving company a lien on shares of any stockholder for debt, does not authorize company to loan, or the stockholder to borrow the capital, 54 C 410
manufacturing company may buy surplus material to take advantage of low price, 55 C 492
——nor is such purchase ultra vires in agent of company, 55 C 492
ultra vires *held* no defense to a suit for balance of price, where company agreed to sell on commission for fixed price and sells for less, 58 C 221
contract entered into before required per cent of capital is paid in, but within charter when perfected, *held* not ultra vires, 58 C 409
——but if organization is not perfected the contract is void, 58 C 409
——such contract does not discharge a subscriber to the capital stock, 58 C 408
has power when fully organized to ratify contract previously made by promoters, 59 C 285
——if contract be reasonable and within the corporate purposes, 59 C 285
——such ratification makes the contract as though the requisite power existed when entered into, 59 C 285
——contract *held* ratified and plaintiff entitled to recover for services prior to incorporation, 59 C 284
——no defense that circumstances rendered it impractical to get subscriptions to stock or to raise money, 59 C 285
——nor that the plaintiff knew that the success of the enterprise depended on these circumstances, 59 C 288
——nor that plaintiff agreed to take pay in stock, where company called in what stock had been issued and decided to issue no more, 59 C 287
railroad directors cannot ordinarily contract to pay for construction of another company's road, 60 C 568
the charter is the full measure of the power of the company, 61 C 129
grants of power not enumerated in charter or excepted out of it, are distinctly denied, 61 C 130
can recover secret profits secured by promoter in organizing corporation, 64 C 102
right to acquire or hold stock in another corporation; transfer of all property to another corporation in return for latter's stock *held* ultra vires, 65 C 336
implied powers, 65 C 347, 83 C 613
ultra vires act defined, 65 C 346
——any stockholder may attack such act, 65 C 336, 69 C 527
charter granting exclusive privileges to be strictly construed against corporation, 65 C 436, 71 C 666
right of corporation to purchase its own stock, 68 C 31
charter provision purporting to authorize taking of property without compensation, fails, 69 C 155
corporation unable to raise capital may lease plant for term of years, with right in lessee to purchase; power to wind up business, 69 C 521
right of corporation to recover for fraudulent representations to promoters and directors before organization, 71 C 1
powers of de facto corporation, 72 C 58, 81 C 466
grant of power to one corporation to accept lease from another implies power in latter to give lease, 73 C 179
can compromise disputed liability on stock subscription, but cannot release valid subscription as against creditors, 73 C 477
incorporators of public service corporation cannot assign franchise, 73 C 513
may give valid note for services in organizing, 73 C 626
use of different names in one instrument, 74 C 224
limit as to amount of property which corporation can hold increased between making and vesting of gift so as to include it; limitation construed, 74 C 586
may be licensed to sell intoxicating liquors, 81 C 145
paying expenses of a voting trust among certain stockholders in abuse of corporate funds, 82 C 178
a corporation chartered to maintain school for town children and to teach advanced studies, taught children from out of town and subjects taught in district school; *held* not to prevent acceptance of legacy, 82 C 188
whether heir at law or only the State can attack right of corporation to take by bequest, quaere, 82 C 188

power to take a gift is not affected by past fault, 82 C 189

can promise to pay market price for property, the legal title of which is in corporation, to one to whom it is due and to whom corporation is indebted, 82 C 224

when corporation bound by implied contract for services, 82 C 281

corporation can agree with stockholders to take stock for goods, 82 C 417

no violation of law for insolvent corporation to accept its own stock in payment for goods, 82 C 417

corporation funds cannot be withdrawn to adjust equities between subscribers, 82 C 559

can exercise all powers within fair intent of its creation to carry out power granted and adopt choice of means to accomplish the end, 83 C 613

if supplying water to an individual is necessary in order to acquire right to supply it to public, not ultra vires to do so, 83 C 633

cannot use name so like that of another corporation as to mislead the public, 83 C 679

propriety of expenditures for legislative aid, if proper, is concurrent with lawfulness of corporate purpose, 84 C 278

power to become party to a note; may not be an accommodation indorser; presumptions, 85 C 147

no presumption that private corporations have right to open highways and lay pipes unless given in express terms, 87 C 183

only stockholders, State, or those receiving special damages from ultra vires act can raise question whether corporation lawfully organized, whether property rightfully acquired, or whether powers have been exceeded, 87 C 183

incidental right of another company to open streets and lay pipes implied by acceptance of charter, 87 C 183

——had power to furnish water to those who received it under a predecessor company, 87 C 184

powers accrue when corporate existence begins, 88 C 233, 99 C 675

contracts made before filing certificate of incorporation not nullities, 88 C 233

misdescription of an institution not fatal; charitable corporation's power to take can be cured by legislation, 90 C 592

charter did not admit life members, but practice of doing so estopped trustees from questioning legality of such admission, 91 C 537

power to act as executor or administrator, 92 C 655

effect of a contract for pledging of accounts due to a corporation, which pledging is ultra vires, 93 C 129

recovery of an ultra vires loan made by a corporation, 93 C 136

Connecticut Street Railway Company *held* not empowered to create a mortgage having priority over its debenture bonds, 94 C 13

power of a California corporation to dispose of stock for full value; presumed to be fair, 94 C 551

corporation having power to issue bonds may issue them for what they will bring, though less than par, 97 C 584

——may pledge them as collateral, under its power to mortgage real and personal property, 97 C 584

power of New York Association to act as trustee of a charity, 100 C 515

a corporation has such implied powers as are necessary to carry express powers into effect, 100 C 517

contract by corporation to buy back its stock for price paid if not successful, ultra vires, 101 C 534

——creates a preference and violates statute, 101 C 534

——cannot be enforced against receiver where corporation derived no benefit and was not estopped, 101 C 534

state referee cannot determine law relating to defense of ultra vires, 101 C 534

a corporation not estopped to set up ultra vires claim on agreement of purchase of stock by K in which corporation had no share and from which it received no benefit, 101 C 534

——nor by receipts of money or merchandise apart from ultra vires transaction, 101 C 534

——quaere, whether receipt of consideration would have prevented corporation setting up breach of statute, 101 C 541

contract by corporation to purchase its own stock illegal; acceptance of benefits will not estop it to raise this defense, 103 C 380

——but money loaned on such a contract may be recovered back, 103 C 380

contract between director and his own corporation; when voidable; authorization or ratification by stockholders; estoppel, 104 C 683

contract to pay stockholders weekly compensation void as attempt to declare dividends out of something other than profits, 104 C 683

contract by corporation to sell stock it has not power to issue is void; purchaser entitled to return of consideration, 106 C 41

existence begins on approval of certificate of incorporation but powers are limited, 107 C 216

——contract made before final organization may be enforceable by ratification or estoppel, 107 C 216

——power in incorporators to raise capital by stock subscription implies power to incur necessary expenses in so doing, 107 C 216
ultra vires act defined, 107 C 338
——cannot be given effect by estoppel or ratification, 107 C 338
effect of sale of corporate property and franchises to another corporation under legislative authority, 107 C 587
contract between corporation and director voidable when dependent on his vote, 108 C 567
——without regard to fairness or good faith of transaction, 108 C 567
equity will not interfere with proper management of corporate affairs at suit of minority stockholders, 108 C 567
minority stockholders may get equitable protection against payments made under voidable contract or under void vote of directors, 108 C 567
vote authorizing withdrawal of assets in guise of compensation is ipso facto void, 108 C 567
no corporation other than bank or trust company shall use as part of its name or as a designation of business carried on "bank" or similar words, 109 C 48
cannot use name tortiously, 110 C 13
corporation without capital stock may make incidental profit, 111 C 203
——statement of purpose to conduct school in articles of association not limitation of this right, 111 C 203
association organized for educational purposes; uses to which it may put money bequeathed it, 113 C 200
courts of equity at instance of stockholder may intervene by injunction to prevent violation of corporate charter or dissipation of assets, 113 C 636
corporation has legal right to do business outside of State in absence of prohibitory statute or charter provision, 113 C 636
building new plant in Detroit *held* not waste of assets and objecting stockholders not entitled to injunction, 113 C 636
corporation was "located and established" in Bridgeport; *held* removal of plant to Detroit not prohibited by statute or charter, 113 C 636
——fundamental change in legal plan not involved and assent of all stockholders not required, 113 C 636
——not change of location requiring assent of two-thirds of stockholders, 113 C 636
defect in organization does not disqualify de facto corporation from holding real estate, 115 C 473
contracts of de facto corporation not mere nullities, 115 C 483
prior to enactment of statutes, sale of all assets of corporation not insolvent or in failing circumstances was ultra vires and could be prevented by nonassenting stockholders, 116 C 628
may exercise all powers within fair intent and purpose of creation, 119 C 127
——if transaction though prima facie foreign to business is auxiliary to any legitimate purpose it is impliedly authorized, 119 C 128
legality of assessment of members by Connecticut milk producers association to create fund for financing of processed milk, 122 C 482
——within purpose of association to manage marketing of and payment for milk to best advantage of all members, 122 C 483
——that purpose would include providing market for milk of all members, though this entailed reasonable sacrifices of individual advantages, 122 C 483
——its arrangement for sale of "homeless" milk within purpose, 122 C 483
——no distinction between this arrangement and one formerly existing of using assessments to pay members for milk delivered to dealers who were unable to pay, in which defendants had acquiesced, 122 C 483
——assessments in question within statutory authority to exercise all powers "necessary or incidental" to carry out purposes, 122 C 483
——and they did not derogate from powers of milk control board to fix minimum price, 122 C 483
——activities not open to attack as against public policy, 122 C 483
charter of corporation construed to give it right to hold real property coming to it as result of necessary steps to collect debt for which it was given as security, 124 C 151
defense that contract is ultra vires is in nature of confession and avoidance and must be specially pleaded, 125 C 358

§ 15. Liabilities

may, by usage, be liable on contracts made differently from prescribed mode, 2 C 254, 261
discount of notes by insurance company, *held* to be ultra vires, 5 C 568, 578
incurs obligation by accepting charter and its benefits, 7 C 93
acts of majority of directors are binding on, 10 C 421
may be liable on contracts informally executed, 14 C 384
debts against, have no situs but follow creditor's person, 14 C 563
private company for public object may not injure another's property to protect its own, without taking the land and paying for it, 15 C 317

canal company is not liable for injuries necessarily connected with construction of canal, 15 C 318
——nor for remote consequential injuries, 15 C 319
maxim "sic utere tuo," etc., applicable to, 15 C 321
grantee of equity assuming mortgage debt is estopped from denying validity of the mortgage, 27 C 145
——or that mortgagee was a properly organized company capable of taking by mortgage, 27 C 145
company cannot be compelled to pay for services rendered prior to its existence, 27 C 179, 59 C 284
under special charter company cannot escape taxation by claim of prescription, 35 C 21
doctrine of estoppel applies to company retaining benefit of contract, 37 C 534
mode of contracting prescribed in charter must be followed, 38 C 187
——policy to be void unless double insurance be consented to by indorsement on policy, 38 C 184
——such provision cannot be waived, 38 C 184
water power company; fishway in dam; charter; damages, 42 C 411
——dam being authorized by charter *held* not wrongfully maintained, 42 C 413
——if fishway was inadequate defendant company could have reasonable time to construct another, 42 C 413
——if company failed to do so it would become liable in damages, 42 C 413
where charter provides for assessing damages plaintiff cannot sue for them at law, 42 C 414
——whether in event of failure to assess, plaintiff could pursue his legal remedy, quaere, 42 C 415
contract signed by secretary, after disapproval by three officers is not binding on company, 47 C 226
——estoppel *held* not to be sustained, 47 C 227
contract *held* ratified and plaintiff entitled to recover for services prior to incorporation, 59 C 284
——no defense that circumstances rendered it impractical to get subscriptions to stock or to raise money, 59 C 285, 288
——or that plaintiff knew that the success of the enterprise depended on these circumstances, 59 C 288
——nor that plaintiff agreed to take pay in stock, where company called in what stock had been issued and decided to issue no more, 59 C 287
railroad directors cannot ordinarily contract to pay for construction of another company's road, 60 C 568
ratification of voidable contract of directors ordinarily requires a positive act, 61 C 142
——what delay will cause acquiescence to become ratification, 61 C 143
company receiving benefit of work cannot refuse payment for its reasonable worth on ground of ultra vires, 62 C 176
where extra work was done by direction of one director with the knowledge of three directors, *held* company taking benefit, must pay what the work was worth, 62 C 176
——even if director ordering was not authorized to bind company, 62 C 176
contractor presumed to have knowledge of certificate of corporation on file, 66 C 22
liabilities as dependent on facts prior to organization, 71 C 1
liability where corporation succeeds partnership and assumes debts to certain amount; taxes on partnership property, 72 C 57
liabilities of de facto corporation, 72 C 65
right of creditors where corporation has conveyed away its property, 73 C 594
valid renewal note cures defects in issuance of original, 73 C 627
not liable for representations of agent in selling his own stock in the company, 75 C 436
incorporation does not exempt association from laws of its order, 81 C 190
not liable to transfer agent for services in transferring stock to voting trusts, 82 C 178
if A company organizes B company, and B company agrees to pay trustee of its bonds for services, A company not liable, 82 C 178
vote of A company to loan B company money to pay for services of a trustee is not an absolute assumption of liability, 82 C 178
Y owning all the stock in corporation transferred it to C or his nominees and made a contract with C acting in name of company with director's approval; contract *held* valid, 82 C 220
liable on implied contract when, 82 C 281
no liability for incidental injuries arising from proper exercise of franchise, such as escaping gas, 82 C 394
social corporation cannot use name of existing corporation, 83 C 679
liable where services rendered with knowledge of company's officers and in belief they would be paid for, 85 C 504
corporation organized for social purposes bound by implied contract, 87 C 1
when obligation to serve public may be implied, 87 C 444
liable on note for money borrowed before certificate of organization filed, 88 C 233
must use reasonable care to see that water supply is safe, 88 C 609

creditor can follow assets turned over to other corporations for payment of debts, 89 C 583
contract on behalf of nonexisting corporation may create liability for those undertaking it, 89 C 634
no obligation to pay for services and expenses in promoting a corporation unless agreed to; can be paid in stock, 92 C 266
stock paid for services where it could only be issued for cash is not an adoption of the services; otherwise if it sues for par value of the stock, 92 C 266
adopting a contract to pay for services creates liability, 92 C 267
express adoption is by vote of proper parties; implied adoption is by acts, conduct or acquiescence, 92 C 267
when adoption of contract with promoters before incorporation creates liability, 92 C 267
if no antecedent contract with promoters, services must be of benefit to the corporation, reasonable, and not gratuitous, 92 C 267
if one corporation issues stock and controls another, equity may enforce against latter, obligation of former, 94 C 14
is liable for tort of agent committed in carrying on its business, 97 C 402
liable for face value of bonds pledged by it and sold by pledgee to plaintiff for less than par, 97 C 584
if agent disobeys instructions, corporation, after knowledge, must either ratify or repudiate, 97 C 589
——note, with contract of pledge written on its face, twice renewed; *held* ratification, 97 C 589
corporation not bound by unauthorized and unratified contract of agent, to repurchase stock sold, 106 C 41
representation that it "had arranged" to have certain person elected director actionable as fraudulent, 106 C 41
lease permitted subletting to corporation organized by lessees; sublease to corporation which they organized but stock of which they immediately sold, *held* not a violation, 107 C 459
where corporation has means of knowledge, its agent must be treated as affirming that he knows whereof he speaks, 108 C 511
choice of corporation of name colorably similar to competitor is evidence of fraud, 110 C 13
effect of State conferring right to use of certain name, 110 C 17
——does not protect corporation in unlawful use of it, as where it amounts to unfair competition, 110 C 17
effect of allegation that one corporation is "subsidiary" of another, 112 C 510
——where employee of one corporation received workmen's compensation from it and sued corporation causing injury, allegation that former was subsidiary of latter no defense, 112 C 510
consent to waive building restriction given by president, individually, not binding on corporation owning land, 114 C 39
corporation liable for article sold before its organization for its benefit and used by it, 115 C 706
liability of corporation for payment of unpaid accrued salaries under agreement that they should be paid "as receipts or earnings subquently permitted," 120 C 221
——incumbent on corporation to manage its affairs and conserve its finances with a just regard to the rights of the payee, 120 C 227

§ 16. Reorganization, Consolidation and Merger

whether consolidation is a merger or extinguishment of original company, quaere, 26 C 568
insolvency proceedings against original company after successive consolidations; service of process how made, 26 C 574
——location for jurisdiction is the town of original company before consolidation, 26 C 576
consolidation of companies chartered in different States, 28 C 299
——confirming act is an exercise of reserved power to amend charter, 28 C 298
——stockholders or directors need not act on same, 28 C 298
original corporation *held* not extinguished for all purposes by consolidation, 28 C 299
assignment of property on consolidation; foreign attachment, 28 C 300
after merger under Connecticut law the Connecticut charter decides as to what is a quorum of directors, 30 C 577
legislation de consolidation; continuous lines; agreement; ratification by Legislature, 45 C 215
——rights of new company to issue bonds and mortgage its road, 45 C 221
reorganized railroad company, with three-fourths of its stock preferred and one-fourth common, *held* entitled by its charter to lease its road by a three-fourths stock vote, 53 C 351
——court would not set aside lease in suit by holder of common stock because rent was 4 per cent on preferred stock and paid directly to stockholders, 53 C 351
——though preferred stock entitled to 7 per cent before common stock shared, 53 C 351
——that some bondholders had not exchanged bonds for preferred stock does not alter the case, 53 C 351

——or that they denied validity of the reorganization, or that there was provision in the lease for the payment of certain creditors, 53 C 351

reorganization by transfer of all shares and all property to new corporation considered; act of all stockholders and directors as act of corporation, 69 C 330, 74 C 84

merger of ecclesiastical societies and its effect, 73 C 216

corporations of different States consolidating become a corporation in each State, 82 C 73

creditor has claim on corporate assets turned over to succeeding company, 89 C 583

voluntary association incorporated is merged in corporation, 89 C 616

formation of a corporation by three members of voluntary association does not cause merger without association's assent, 89 C 616

the Consolidated Company, although merging with the New York, New Haven and Hartford Railroad Company retained its identity, 94 C 24

meaning of "consolidation of," 107 C 602

generally speaking the corporate entity and shares of stock are not affected by acquisition or surrender of some of corporate powers, 116 C 172

technical distinction between "merger" and "consolidation;" this distinction not always recognized or observed, 116 C 172

where corporation files voluntary petition seeking reorganization under § 77B of Bankruptcy Act, which involves transfer of its assets as distinguished from transfer by order of court after confirmation of plan, proceeding must be authorized by directors and stockholders at meeting duly called, 123 C 632

§ 17. Dissolution

See also Receivers

a default involving forfeiture of charter must be judicially determined, 7 C 46, 12 C 20, 36 C 334

mere neglect to exercise franchise is no dissolution of, 9 C 543

——determinable only by a proceeding for that purpose, 9 C 543

transfer of all the stock to one person is no dissolution, 9 C 544

charter treated as surrendered, if not accepted in reasonable time, 16 C 191

mere resignation of officers and neglect to fill vacancies is no dissolution, 20 C 458

neglect to elect officers or file returns is not collaterally examinable, 20 C 556

absolute dissolution by decree or repeal of charter extinguishes debts due to, or from it, 36 C 334

dissolution by winding up or in any way except by legislative repeal or judicial decree does not affect creditors, 36 C 335

——winding up national bank by comptroller, 36 C 335

vote to suspend operations is no dissolution, 38 C 365

winding up, on application of stockholders, is not prevented by bankruptcy proceedings, 40 C 538

——nor because corporation exists under laws of several States, 40 C 539

——decree of dissolution extends only to charter granted by this State, 40 C 539

that abandonment or neglect complained of was not voluntary is no ground for refusing decree of dissolution, 40 C 540

discretion of court as to ordering dissolution, 47 C 167

statutes de dissolution examined and construed, 47 C 168

averments and proof necessary in proceedings for dissolution, 47 C 168

the absolute dissolution of company abates all suits and attachment liens, 56 C 475

——there is no legal connection between appointment of receiver and dissolution of corporation, 56 C 476

statute de suits by receiver in name of company, is not a recognition of capacity of company to sue and be sued after decree annulling charter, 56 C 476

any corporation may sell assets, pay debts and wind up business, 69 C 522

stock of a corporation which is being wound up is a trust fund for the payment of its debts, 72 C 658

only courts of State of incorporation can dissolve, 73 C 151, 595, 78 C 599, 91 C 91

unqualified dissolution ends suits then pending against it and vacates attachments of corporate property, 73 C 151

——applies to both foreign and domestic corporations, 73 C 151

power of equity to wind up corporation, 73 C 590

courts can protect all parties; continuance of existence of corporation and renewal of franchise under statute, 76 C 464

creditor need show only bona fide claim as basis for request to reopen judgment winding up corporation where he has had no notice; effect of finding that his claim is valid; where one corporation transfers all its assets to another, rights of creditors of latter to enforce contracts of former, 76 C 464

enforcement of liability of new corporation to pay debts of old, 76 C 465

right of bondholders secured by mortgage to purchase at sale on foreclosure of mortgage, 76 C 643

statute (Missouri) making directors trustees to wind up merely declaratory, 78 C 577
dissolved corporation not a proper party to creditor's bill against stockholders, 78 C 605
where charter provides that unless railroad is built in certain time, its existence and powers shall cease, this does not work dissolution ipso facto, but furnishes ground for it; on dissolution, directors hold property as trustees; their powers; dissolution not worked by repeal of law under which it is organized, 81 C 466
on dissolution, receiver might have been appointed, 81 C 472
when judgment of dissolution is final and against whom, 81 C 592
dissolved corporation revived to be sued on its obligations, 82 C 333
dissolution does not impair rights vested in stockholders, 82 C 418
corporation not dissolved by appointment of receiver, 82 C 418
corporate action by stockholders impossible after dissolution, 82 C 418
equity does not ordinarily dissolve a company and wind up its affairs but there are exceptions; statute provides how company can be dissolved and grounds for doing so, 87 C 656
foreign corporation cannot be dissolved; receiver may be appointed for local business, 91 C 91
voluntary dissolution; conveyance of "equipment" limited to machinery, 91 C 272
no dissolution at instigation of private parties unless statute allows it, 91 C 536
in winding up proceedings informal orders are interlocutory and may be modified or vacated, 91 C 537
statute permits corporation without capital stock to be wound up by its managers only, 91 C 537
judgment winding up corporation without capital stock determines to what part of net assets each member is entitled; final, for purposes of appeal, 91 C 537
duty of directors acting as trustees as to payment of taxes, 96 C 73
directors of a corporation as trustees in liquidation are not receivers or officers of court, 96 C 79
——property of corporation does not come into custody of law so as to prevent interference therewith by third party, 96 C 79
where claim disallowed by directors acting as trustees in liquidation of corporation, creditor must begin action to enforce claim within four months, 96 C 83
trust fund theory explained, 101 C 713
distribution of assets to stockholders attacked by prejudiced creditor, 101 C 713
creditors cannot attack sale of corporate property to bona fide purchaser, 101 C 713
——all elements of fraudulent conveyance must exist, 101 C 713
disposition of escrow fund on sale of corporate assets, 101 C 713
statute as to dissolution of corporation without capital stock applied to private school, 105 C 456
sale of corporate property and franchises under legislative authority carries all powers, including eminent domain, 107 C 587
on dissolution of nonstock corporation conducting expensive private school, *held* property would go to members, not be impressed with trust, 108 C 136
suits may be brought against corporations after voluntary dissolution, 108 C 436
voluntary dissolution *held* not to affect or defeat prior unliquidated tort claim, 108 C 436
voluntary dissolution not necessarily final for all purposes, 108 C 437
——corporation continues for purpose of closing up its affairs, 108 C 437
——where after accident in which its truck killed person and administrator on his estate was appointed, dissolution proceedings were at once begun, inference is that purpose was to defeat claim, 108 C 437
——mere filing certificate of dissolution with motion to erase case not sufficient to end it, 108 C 437
law does not provide for distribution of property in kind, but for sale of assets before dissolution, 113 C 455
assets of corporation are dedicated to its uses and payment of debts and upon dissolution after payment of debts to stockholders pro rata, 115 C 473
term "liquidation" as meaning the realizing by a trustee upon assets and apportioning them to discharge of ascertained liabilities, as in winding up a corporation, 116 C 618
M Bank, in financial difficulties, entered into agreement with C Bank transferring to it all assets, C Bank assuming all liabilities; *held*
——from provisions of vote, agreement of transfer and practical construction gist of transaction was absolute sale, not transfer for purpose of liquidation for benefit of M Bank creditors, 116 C 618
——and sale outside scope of statutes de sale by corporation except banks of all assets, and not impliedly forbidden by them, 116 C 617
——creditor of M Bank cannot compel receiver of C Bank to segregate transferred assets for former's creditors, 116 C 618
appellant foreclosed from claiming transfer of assets from one bank to other void by

course of conduct in acquiescing in it, accepting payments from transferee, and seeking to avoid transfer only when latter went into receivership, 116 C 617

prior to enactment of statutes, sale of all assets of corporation not insolvent or in failing circumstances was ultra vires and could be prevented by nonassenting stockholders, 116 C 628

——purpose of statute authorizing corporations, except certain ones including banks, to sell all assets on vote of two-thirds of stock was to change this rule, 116 C 617

——common-law rule did not apply to corporation which was insolvent or in failing circumstances, closing up its affairs, 116 C 628

——sale by such corporation, though a bank, not impliedly forbidden by the statute, 116 C 628

appointment of receiver does not bring about dissolution of corporation, 118 C 21

decree of dissolution rests in sound discretion of court, which must be based on sufficient cause shown, 120 C 235

——no inflexible provision for dissolution, though action has been brought and receiver appointed, 120 C 235

order to receiver to turn back assets to corporation in receivership after all claims paid or adjudicated, sustained, 120 C 235

——though prior order made before all claims were adjudicated, was to distribute them to stockholders, 120 C 235

——this was not final judgment, which could not be opened, especially as assets had not been actually distributed, 120 C 235

——and equity was done to all stockholders, including S who had note secured by stock, 120 C 235

——fact that R, whose signing personal note with company name had caused receivership, was still interested in corporation, nil sig., 120 C 235

where trustees of corporation in dissolution are guilty of misappropriation or misuse of funds they are jointly and severally liable, 121 C 77

——judgment will lie against one or all, 121 C 77

sale by trustees of corporation of its property in roundabout way to corporation organized by them for less than inventory value furnished presumptive basis for judgment for fraud, 121 C 77

——unless by evidence they rebut it, 121 C 77

——burden of proof on trustee to affirmatively show transaction fair, 121 C 85

——court could find that inventory values were actual values, 121 C 77

——damages based on difference between that amount and prices received correct, 121 C 77

after vote to dissolve, all assets become trust fund in hands of trustees for benefit of creditors, 121 C 86

where all assets of corporation are turned over to another corporation to carry on its business, every stockholder has right to share in fruits of reorganization; that stockholder has only few shares no ground to refuse him relief, 123 C 632

——remedies of stockholder who has been deprived of that right discussed, 123 C 642

stockholders who had previously signed proxies to be voted for voluntary dissolution of corporation not knowing facts, neither waived right nor were estopped to ask appointment of receiver, 127 C 25

distinction between voluntary dissolution under control of directors and trustees and a statutory receivership, 127 C 26

fact that corporation is in voluntary dissolution does not prevent application of receivership statute, 127 C 26

——proof of directors' misconduct prior to voluntary dissolution may be considered, 127 C 26

where director-trustees were directors and officers of three closely related corporations, one of which was summarily taking over assets of defendant, appointment of receiver justified, 127 C 26

§ 18. Meetings; Votes; By-Laws; Records; Proceedings

company having power to make by-laws may pass by-law enabling stockholders to vote by proxy, 5 D 333

directors may hold a legal meeting in another State, 6 C 436, 57 C 101

vote passed at meeting not legally warned is void, 7 C 219

fraud not presumed from change in method of notice, if the notice is actual, 8 C 158

notice of directors' meeting without specifying business is sufficient usually, 8 C 200

acts of directors under written vote is binding on, without a seal, 8 C 202

express promise to pay as evidence of notice, 13 C 173

vote by directors is presumed to be legal and by legal board, 13 C 184

notice should be reasonable, if no time is specified, 13 C 184

vote appointing agent to execute deed need not be under seal, 14 C 603

——nor need vote be recorded with the deed, 14 C 603

resigning clerk may record his own resignation if no other be appointed, 20 C 457

votes passed at meeting not regularly held, become valid by approval, 22 C 403

by-laws of corporation, invalid, when; when abrogated or suspended by statute to same effect, 23 C 133
clandestine meeting of directors how shown, 24 C 601
vote procured by fraud and concealment is vitiated thereby, 24 C 603
member of mutual fire insurance company bound to notice and observe its by-laws, 29 C 69
after merger under Connecticut law the Connecticut charter governs de quorum of directors, 30 C 577
construction of vote authorizing release deed, 31 C 21
mere vote to increase capital stock does not give it an existence, 47 C 164
vote of directors designating treasurer as the one to sign, execute and deliver all papers, etc.; *held* that such vote did not confer power upon him to loan the credit of the company for private purposes, 54 C 412
record of meeting, that a special meeting of the directors "called for the purpose of making an assignment" for the benefit of creditors, etc.; *held* that it would be presumed that the purpose of the meeting was specified in the call, 55 C 468
——burden to show contrary on denying party, 55 C 468
——this rule applies also to stockholders' meeting, 55 C 468
notice by telegram of directors' meeting, when sufficient, 55 C 464
where nothing to the contrary in by-laws, meeting of directors may be called at any time, wherever they may happen to be together, without previous notice, 55 C 467
——such a meeting *held* sufficient for a valid assignment in insolvency under statute, 55 C 467
the actual consideration of the future course of a Connecticut joint stock company, by all of its assembled stockholders, is a valid meeting, 56 C 96
——appointment of agent at such meeting is binding on company, 56 C 96
——notice, written resolution and record of doings is not essential; consenting speech and act is equivalent, 56 C 96
——especially where the three assembled constituted all the stockholders and directors, 56 C 97
vote of stockholders de building branches construed and *held* not to cover a branch contracted for by the directors, 60 C 570
——vote also *held* not to authorize building a branch in defiance of law, or one not sanctioned by charter, 60 C 571
right of voting is an incident to the ownership of stock and cannot exist apart from it, 60 C 577
——a surrender of this right for a term of years is opposed to public policy, 60 C 578
trust certificates construed and *held* quasi negotiable, 60 C 584
——purchasers of such certificates do not thereby become partners in a syndicate, 60 C 583
——owners of such certificates are the equitable owners of the stock itself, 60 C 577
——and may revoke the voting power previously given the trustee, 60 C 577
——the committee also *held* to be a mere agent having no legal title to, or interest in, the stock, 60 C 580
——holders of trust certificates issued for stock held and voted by trustee, are not estopped from claiming that votes thus passed were illegal, 60 C 575
trustee of bare legal title of stock, *held* to be a mere agent with no beneficial interest, 60 C 580
——the mere hand to cast such ballots as the committee of the syndicate might direct, 60 C 580
presumption that stockholders had notice of meeting of corporation and action thereat, 64 C 405
mandamus to compel call of special meeting, 65 C 355
presumption that vote was recorded and record signed; such record as answering the Statute of Frauds, 72 C 66
recorded vote only proper evidence of act of corporation, 72 C 472
dissolution proper subject of suggestion on corporate record, 73 C 151
stock books as evidence of membership, 73 C 391
entering property as "capital" as evidence that it is such, 74 C 37
presumption that meeting of directors was properly called; effect of record or want of it, 75 C 555
power of majority to amend by-laws as to date of meeting, number of directors, and length of term of one already elected, 75 C 669
injunction does not lie to prevent meeting because of want of notice, 75 C 675
self-serving declaration on record inadmissible on behalf of corporation, 77 C 466
when notice to majority of directors is sufficient, 80 C 37
vote authorizing loan to another company does not authorize assumption of liability for services of third party to the latter, 82 C 179
in absence of provision to contrary, stockholders act by majority vote of those present at duly called meeting, 83 C 44
if records do not show corporation votes, other evidence admissible, 86 C 548

if officer's authority does not appear of record, it may be proved by other evidence, 86 C 548
assessment by president and directors equivalent to one "by directors;" vote is prima facie evidence of reasonableness, 86 C 667
no formal vote necessary to create liability on implied contract, 87 C 1
vote to sell real estate and machinery does not include equipment, 91 C 272
no record of provision in original articles for life members; presumption as to same from practice, 91 C 536
omission of value of property issued for stock does not create presumption of issuance for cash, 92 C 266
subscription rights are assignable, transfer being effective as novation when accepted by corporation, 101 C 291
——acceptance by recognition and acquiescence; no formal vote necessary, nor assent of all other subscribers, nor compliance with provisions of by-laws de transfer of stock certificate, 101 C 291
vote authorizing withdrawal of assets in guise of compensation is ipso facto void, 108 C 567
contract with directors made by their own votes, voidable at option of interested parties, 108 C 567
——vote for payments to directors of salaries without regard to earnings of corporation, as withdrawal of corporate assets in guise of compensation, 108 C 567
minority stockholders may get equitable protection against payments made under voidable contract or under void vote of directors, 108 C 567
rights of trustee in corporate stock of bankrupt; trustee not entitled to notice of meeting unless he has certificates transferred; bankrupt may vote stock still in his name, 111 C 475
——right of person appearing as stockholder on books to vote stock, 111 C 478

§ 19. Foreign Corporations

effect of clause in charter of Pennsylvania company, limiting interest rate, 13 C 257
foreign companies not bound to respond to a mere summons, 14 C 304
power of foreign company to make contract sued on not admitted by plea to general issue, 14 C 438
as resident of State where it does business, 70 C 561
liability of shareholders and right of receiver as determined by State of incorporation, 73 C 377
effect of receivership proceedings and decrees in foreign State, 73 C 377, 78 C 605, 79 C 175
cannot act as executor here, 74 C 625
rights on dissolution under Missouri law, 78 C 575
——under Minnesota law, 79 C 164
nature of New York joint stock association, 81 C 526
liability where two States concur in forming company, 82 C 73
taxation of foreign company based on actual situs of property, 82 C 406
restrained from using name similar to earlier domestic company, 83 C 679
manager of foreign company liable for violation of ordinance, 88 C 715
right of nonresident to inspect books kept in this State contrary to law of home State, 90 C 638
cannot dissolve foreign company but can appoint receiver for local business, 91 C 91
foreign trust company cannot be an administrator, 92 C 649
power of foreign corporation to act as executor, whether appointed by will, or on ancillary appointment, 92 C 649
right to levy excise tax as condition of doing business in State, 94 C 47
what law governs where corporation is organized to do business in another State, 94 C 555
Connecticut courts may regulate business of, in this State, 96 C 265
State may levy an excise tax upon a foreign corporation for the privilege of doing business within its limits, 97 C 521
foreign corporation engaged in interstate commerce cannot be excluded by a State from doing business therein, 97 C 522
power of court to render judgment against foreign corporation where it considered it could do complete justice even though the judgment could not be enforced extraterritorially, 98 C 252
——comity as giving effect to such a judgment, 98 C 252
——money judgment against insurance company for overassessing of premium upheld against claim that it would involve accounting, etc., 98 C 252
——jurisdiction against, by reason of corporation doing business in State, service of process, appearance and pleading, 98 C 257
voluntary dissolution of New Jersey corporation considered with reference to right of receiver to sue in a foreign State, 104 C 666
on dissolution of nonstock corporation of New York, property would go to members, 108 C 136
effect of declaration of dividend is determined by law of corporate domicil, 109 C 268
——hence by New York law dividend vests when declared, though payable to stockholders of record at future date; this rule will

govern time of vesting as between trustee and beneficiary here, 109 C 268

——in general foreign law governs relationship between stockholder and corporation, 109 C 277

where corporation had no place of business in this State, and sale of goods not consummated here, operation did not constitute transaction of business within this State within meaning of statutes, 119 C 603

statute providing that certificate of appointment of commissioner by foreign insurance company as attorney for service of process shall be sufficient evidence of his authority, does not make this exclusive method of proof, 121 C 309

——reception of service of process and collection of fee provided, with presumption of proper performance of his duties, are sufficient basis for inference of authority, 121 C 309

——fact that company is doing business in this State presupposes compliance with requirements for appointment of commissioner as attorney, 121 C 309

when it has complied with provisions of law entitling it to admission to a State in so far as pertains to business done in the State, it is entitled to benefit and subject to laws of State to same extent as domestic corporation, 122 C 591

soliciting orders by traveling salesmen here subject to acceptance or rejection by corporation in another State, not "transacting business" here so as to subject corporation to statute de foreign corporations, 124 C 597

——so where agent took orders here for listing names of attorneys in publication of foreign corporation, subject to latter's acceptance, rejection or discontinuance at its foreign office, and no office maintained here except for communication, no license or filing of charter required, 124 C 597

§ 20. Actions

§ 21. ——In General

claiming lands devised in trust; must show charter authority to take devise in trust, 6 C 304

secretary de facto is secretary for service of process, 6 C 435

——service of process on agent as such and acting clerk is insufficient, 6 C 435

may be sued in any town where stockholder resides, 13 C 212

——stockholders regarded as parties to determine jurisdiction, 13 C 211, 227

foreign companies not bound to respond to a mere summons, 14 C 304

trespass will not lie against, if another remedy be given by charter, 15 C 334

resignation of officers to prevent service of process *held* of no effect, 20 C 457

——in such case what service might be good, 20 C 458

neglect to elect officers or file returns is not collaterally examinable, 20 C 556

action for vexatious suit will lie against, 22 C 535

not estopped to set up ultra vires, in equity, 23 C 622

vote procured by fraud and concealment is vitiated thereby, 24 C 603

successive consolidations; insolvent proceedings against original company, 26 C 568

——under form of description, *held* to be against original company, 26 C 568

——against creditor setting up attachment against original company, 26 C 568

——service of process to be made on last secretary of original company, 26 C 574

——location for jurisdiction is the town of original company before consolidation, though business there be discontinued, 26 C 576

ownership of stock is properly determined by company's books only, 29 C 253

president's authority to execute deed in name of, may be shown aliunde, 30 C 95

——formal vote not necessary to show this authority, 30 C 96

malicious purpose in leasing may be shown in defense of action by, 34 C 530

title of director in company created by United States cannot be tried by quo warranto in state court, 35 C 378

"principal place of business" is where the governing power is exercised, 40 C 70

stockholders' right to maintain bill against one injuring company depends upon what, 42 C 589

——creditors of company stand on different ground, 42 C 589

statute de suits by receiver in name of company, is not a recognition of capacity of company to sue and be sued after decree annulling charter, 56 C 476

a petition to railroad commissioners under statute brought by executive officer of railroad with knowledge of directors, *held* properly brought, 57 C 101

action lies to recover secret profit secured by promoter, 64 C 102

action on false representations made to promoters and directors prior to organization, 71 C 1

how far judgment against corporation estops stockholders, 73 C 382, 606, 79 C 173, 186

decree cancelling all subscriptions refused where only fault is failure of one stockholder to keep his agreement with rest, 73 C 517

mandamus against, 76 C 179, 90 C 638

action by creditors, where one corporation has transferred all its assets to another which assumes its debts, 76 C 465
action to adjust equitable rights in stock and to compel registry is in rem, 76 C 628
creditor's bill to reach shareholders and directors; jury trial; concurrent remedies; nonresident stockholders and administrator of deceased stockholder as parties, 78 C 592
corporation not party to action after dissolution, 78 C 605
judgment dissolving company final for purpose of appeal, 81 C 592
judgment may be rendered against a Connecticut company sued here on obligation to be discharged here, even though in Massachusetts, where it is also incorporated, it would not have been liable, 82 C 73
whether heir at law or State can question power to take a gift, quaere, 82 C 189
dissolved company can be revived to enable it to sue on obligations owned by it, 82 C 334
stock of nonresident can be attached, 84 C 618
——shares have situs at location of corporation, 84 C 618
where officer signs a note, the question is his apparent as well as real authority, 85 C 148
equity jurisdiction to restrain waste and misappropriation, 87 C 656
mandamus will lie to inspect books of foreign company in this State, 90 C 638
mandamus should run against clerk or secretary only, 90 C 639
cannot dissolve foreign company; can appoint receiver for local business, 91 C 91
in winding up proceedings under direction of court, informal orders are interlocutory and may be modified or vacated, 91 C 537
company suing to recover par value of stock estopped to question authority of directors to issue it, 92 C 266
if in doubt whether to sue corporation or officer personally, both may be sued and damages claimed in the alternative, 93 C 479
right of equity to interfere in corporate affairs by injunction, 113 C 636
T incorporated realty company but organization certificate was never filed and thereafter conveyed real estate to it; *held* T not entitled to reconveyance on ground of mistake of law, 115 C 473
——proper remedy is receivership to wind up its affairs, 115 C 473
suit by superintendent of banks of New York to enforce assessment on Connecticut stockholders under New York statute, 119 C 83
——right of superintendent to enforce assessment upheld by New York courts, 119 C 83
——not an unconstitutional delegation of judicial power to administrative officer, 119 C 83
——analogy between superintendent of banks who has taken possession of bank and receiver, 119 C 83
——former is just as much a quasi or statutory assignee of right to enforce obligations as is receiver, 119 C 83
——and receiver being vested with right of action on behalf of creditors to enforce liability against stockholders, to deny him right to sue in courts of another State would be denial of full faith and credit clause in Constitution, 119 C 83
——that such a right accrues to superintendent by statute rather than court action, nil sig., 119 C 83
——right of superintendent to enforce assessment not such special remedy as would permit our courts to decline to entertain action by him, 119 C 83
——were matter one of comity, not sufficient reason for our courts to decline to enforce right because under our laws no similar right exists, 119 C 83
——obligations growing out of contractual relationship of stockholders included any lawful liability created by statutes to respond to calls to meet claims of creditors, 119 C 83
——no specific authority to superintendent to bring action in foreign jurisdiction necessary, 119 C 83
——certificate of superintendent as to necessity of assessment and its amount at most evidence of this and not conclusive; failure to allege fact of insufficiency of assets made complaint demurrable, 119 C 83
——provision that certificate shall be "presumptive evidence" of facts therein stated has no application to action brought by him in this State, 119 C 83
——insufficiency of assets to be determined at time assessment made; not necessary to wait until liquidation, 119 C 83
——provision exempting person who has transferred stock to resident of New York does not indicate intent to make law applicable only to resident of New York, 119 C 83
——joining many stockholders as defendants in one action not misjoinder, 119 C 83

§ 22. ——Pleading and Evidence

admissions of president and directors inadmissible to bind company, when, 3 D 495
bill in equity must set out part of charter enabling company to sue, 3 C 202

capacity of company to sue is admitted by a plea of general issue, 14 C 439
——but not the power of foreign company to make contract sued on, 14 C 440
——which power must be proved, 14 C 440
intent of, learned only from its records, 15 C 334
——views and declarations of members inadmissible to vary same, 15 C 334
presumption is that corporation is empowered to hold property, 16 C 427
——especially against wrongdoer setting up no title, 16 C 427
action taken on report of committee is not provable by parol, 20 C 204
record of vote of, admissible without proof that meeting was duly warned, 22 C 403
to rebut record book, other records of same meeting admissible, with proof of their genuineness, 24 C 599
record of directors' proceedings is legal evidence; may be contradicted, 24 C 601
clandestine meeting of directors, how shown, 24 C 601
subsequent vote rescinding vote relied on, admissible to show repudiation, 24 C 602
objection to corporate character must be taken by plea in abatement, 29 C 148
secretary may testify that he knows of no vote on the records of the society, 29 C 243
affidavit of stockholder obtained by imposition and fraud is explainable by parol, 30 C 225
evidence *held* proper to show director's knowledge and participation in fraudulent statements, 30 C 376
declarations of draw-tender as to mode preferred by company in passing through draw, admissible to prove license to sail through, 30 C 390
record book is evidence of meeting and presumptive evidence of payment of capital, 30 C 576
record reciting directors' meetings is presumptive evidence that all were notified, 30 C 577
averments and proof necessary in proceedings de dissolution under statute, 47 C 168
prior course of dealing between same parties *held* admissible de disputed authority of agent, 55 C 494
loan to "A. B. agent;" evidence that A. B. was bankrupt *held* inadmissible to show why transaction took that form, 55 C 493
——without evidence connecting this with other similar transactions showing like motive, 55 C 494
conversation with one of three directors of company authorizing work, with circumstances, *held* admissible, 62 C 169
——where director apparently acted officially and company received benefit of work, 62 C 174
stock books and certificate of incorporation in foreign State admissible for corporation, when, 73 C 379
requisites of complaint to recover on call on stock subscription, 73 C 477
president may testify as to intent of corporation, though no vote of corporation determines it, 78 C 1
allegation that shareholder fraudulently withdrew funds lays no foundation for a claim to recover benefits as a member of a copartnership pursuant to agreement with the incorporators, 82 C 560
where the charter is set out, averments as to powers disregarded, without proof, 84 C 275
admission of indorsement of note is admission of an authorized indorsement, 85 C 148
presumption that indorsement is for value, 85 C 148
ultra vires must be specially pleaded; burden of proof, 85 C 151
rule that acts done through a known agent should be pleaded does not apply to acts and promises of a corporation, 85 C 513
an allegation that D performed certain acts personally is sufficiently accurate although it appeared that they were performed by a family corporation controlled by D, 90 C 625
lack of company authority can be shown even if not alleged, 91 C 272
company cannot obtain advantage by pleading its own acts as ultra vires, 91 C 537
complaint not demurrable for failure to allege contract was authorized when that is the point in dispute, 93 C 479
two counts unnecessary where one sues A individually and as officer of company, 93 C 479
certificate of superintendent of banks of New York as to necessity of assessment and its amount at most evidence of this and not conclusive; failure to allege fact of insufficiency of assets made complaint demurrable, 119 C 83
——provision that certificate shall be "presumptive evidence" of facts therein stated has no application to action brought by him in this State, 119 C 83

COSMETICIANS

See Licenses

COSTS

§ 1. In General
2. When and to Whom Taxable in General
3. In Particular Actions

See also Appeal to the Supreme Court § 50; Wills § 56

§ 1. In General

entry for costs to be made during term, K 269
regarded as part of the punishment, 16 C 50
clerk may perfect record by inserting costs after the term, 21 C 530
statute limiting costs to amount of damages recovered, examined and construed, 25 C 250
statute de discretionary taxation of costs, where damages are nominal, *held* constitutional, 30 C 325
——also *held* retrospective, 30 C 324
costs in justice court are subject to revision in appellate court, 32 C 17
party's right to costs is based wholly on statute, 38 C 554
under statute, only one bill of costs allowed several defendants, 45 C 102
attaching officer may charge for keeping animal in his bill of fees, 47 C 578
——becomes a preferred claim in case of insolvency, 47 C 578
——officer looks to attaching creditor who presents the claim, 47 C 578
——neither acquires a lien as against the assignee, 47 C 579
plaintiff paying costs on amendment of complaint cannot recover them back on final judgment, 50 C 521
——rule includes clerk and court fees as well as other costs, 50 C 521
title to land under statute must be so put in issue as to be settled, 54 C 57
——but the pleadings of either party may present the issue, 54 C 58
——the court not the jury finds the value of the land involved, 54 C 59
taxation of costs is peculiarly within the province of the court, 54 C 59
costs due attaching creditors whose liens are dissolved under statute are a first lien on the property, 56 C 100
matter in demand as determining costs, 57 C 59
justice may tax, on a day subsequent to that on which judgment was rendered, 57 C 274
injunction brought and motion to dissolve denied; a judgment for defendant for costs after withdrawal of plaintiff, *held* a "final decree" under statute, 62 C 490
——question as to costs on motion to dissolve, *held* not reviewable, being "according to discretion" under statute, 62 C 490
appeal from taxation of costs, 67 C 259, 74 C 107
in equity, failure to tax for or against one defendant equivalent to judgment that they should not be taxed, 72 C 87
costs at law are the creature of statute; "civil action" includes what, 73 C 614, 81 C 213
costs on appeal from justice court where judgment on appeal is smaller, 76 C 210
statutes in force at termination of action control; act of 1907 as to recovery of full costs regardless of value of property or amount of damages applies to pending actions; laws as to costs are laws of procedure, 81 C 213
costs not taxable unless given by statute, 82 C 392
Supreme Court passes on case that is academic only, as costs are involved, 85 C 272
when costs in City Court of Danbury are the same as Common Pleas, 91 C 657
two trial and jury fees allowed if two distinct actions with separate verdict and judgment are tried together by agreement though defendant same in both, 93 C 658
fee of deputy game warden *held* properly taxed in costs in criminal prosecution for violation of game laws, 98 C 715
are creature of statute; courts cannot tax without statutory power, 100 C 411
allowance of costs and counsel fees is a judicial act which cannot be done after final judgment, 104 C 412
judgment awarding such costs as are legally taxable is defective in form, not being direct adjudication, 111 C 427
costs are matter of statutory regulation, not taxable unless given by statute, 113 C 737
——general provision as to what costs are taxable in all actions, 113 C 737
——none are taxable in habeas corpus, 113 C 737
——discretionary in equity actions, 113 C 739
costs limited to amount of verdict for nominal damages, 119 C 496

§ 2. When and to Whom Taxable in General

none allowed for either party when judgment is arrested for insufficiency of declaration, K 89, 218

——or for causes demurrable, 20 C 349

what allowed plaintiff on final judgment after abatement and amendment, K 89

what allowed on judgment by confession, K 236

accused not liable for costs when evidence is insufficient to convict or bind over, K 362

full costs allowed where damages are reduced by act of defendant pending suit, 1 R 136

full costs allowed after verdict set aside, repleader and new verdict for same party, 1 R 374

garnishee who defends may retain costs from fund factorized, 2 R 250

executor pursuing action begun by testator is personally liable for, 2 R 398

taxation of costs in equity is within discretion of court, 2 C 403, 5 C 474, 28 C 472

rule as to costs where each party is successful on counts for distinct causes, 7 C 399, 13 C 164

towns are liable only for costs legally taxable, 7 C 534

surety in recognizance for prosecution not liable for costs accrued at time of plaintiff's death where plaintiff dies before final judgment, 9 C 236

discretionary with court to allow or disallow, when, 10 C 124

taxable in equity against both defendants uniting in act for benefit of one, though decree can be against one only, 13 C 491

when defendant though successful on one count is not entitled to, 14 C 25

liability of surety in recognizance for prosecution, 14 C 329

effect on costs, where less than $35 is recovered, title to land not being in issue, 18 C 394

of capias for state's witnesses is taxable against accused, 19 C 488

only recoverable as incident to debt or damages, 19 C 531, 31 C 454, 39 C 466

in equity; trustee or personal representative when personally liable for, 19 C 539

not taxable against party not before the court, 26 C 530

absolute guarantor cannot recover costs for prior suits, 27 C 41

where offer of judgment of certain sum filed, and plaintiff recovered sum two years later made larger only by addition of interest for the intermediate time, defendant could recover costs, 33 C 216

how taxed when plaintiff withdraws without defendant's knowledge, 35 C 4

not incident to debt until sued, or to action until it is pending, 38 C 551

——defendant not liable for, after service on garnishee but before service on himself, 38 C 551

acceptance of amount in full payment after service and before trial, bars costs, 39 C 466

individual bringing suit on statute for penalty entitled to costs under general statute giving costs to parties in civil proceedings, 39 C 485

informer *held* entitled to, 39 C 497

single capias for three witnesses; each witness liable only for his share of, 41 C 316

——demand by justice of whole cost from one, under pain of imprisonment, renders justice liable for false imprisonment, 41 C 316

costs on amendment are in discretion of court, though its exercise conflict with fixed rule of court, 43 C 203

how taxed in actions against husband and wife where judgment is against one only, 44 C 310

wife in whose favor judgment is rendered on appeal is entitled to costs, though joined with husband, 48 C 219; cf. 44 C 308

judgment for costs, on withdrawal, is regarded as rendered at time of withdrawal, 48 C 305

surety on bond for costs is liable after what steps against principal, 48 C 384

defendant entitled to costs who successfully pleads to jurisdiction, 57 C 273

——aliter if case is erased on motion or by court for want of jurisdiction, 57 C 273

in justice suit plaintiff cannot by withdrawal deprive defendant of judgment for, 57 C 274

only costs up to time of insolvency can be allowed, though claim has gone into judgment after assignment in insolvency, 59 C 550

party cannot recover for the time during which he has paid, 62 C 57

plaintiff nonsuited; case restored on payment of costs; *held,* on judgment for plaintiff, that costs accruing before nonsuit, except service and writ, ought not to be allowed, 62 C 57

costs may be given where plea to jurisdiction is sustained, 64 C 74

where judgment in justice court is for defendant for want of proof on one issue and for him, on appeal, for want of proof on another, latter judgment not "more favorable," 66 C 57

where no established rule, costs rest in discretion of court; as in proceedings against garnishee, 67 C 257

statute as to taxing costs on withdrawal of action applies to action withdrawn before return day, 70 C 380

record fee taxable by trial court only on determination of litigation, 73 C 475
discretion of court where plaintiff gets general verdict on complaint in which are two counts, one in contract, and the other in tort and beyond court's jurisdiction, 79 C 304
where legal and equitable relief is sought and equitable principles control, court has discretion, 80 C 227
costs allowed where appeal to Superior Court is abated because not seasonably taken, 82 C 378
in criminal case defendant, if successful on appeal, cannot get costs, 82 C 392
costs are taxable on determination of a plea in abatement, 82 C 483
no costs if case erased for want of jurisdiction apparent on the record, 82 C 483
where judgment is difference between award and counterclaim, costs are governed by amount of counterclaim, 91 C 657
in equitable action costs within discretion of court, 92 C 345
on nonsuit, defendant entitled to costs, 94 C 80
costs taxable upon statutory removal to proper tribunal of cause returned to wrong court, 105 C 671
judgment for defendant to recover costs should be subject to deduction for reasonable expense incurred by opponent because of untruthful pleading on former's part, 107 C 491
statutes giving costs in general terms will not be construed to apply to State, 111 C 432
——State is immune from legal process mesne or final, 111 C 432
judgment for costs is judgment in favor of party and not of his attorney; attorney cannot take execution on judgment against orders of client, 112 C 666
judgment upon plea in abatement might carry costs, 113 C 770
——hence party specially appearing may ask bond for costs, 113 C 770
defendant counterclaimed for services rendered plaintiff; *held* where their value plus payments made did not exceed plaintiff's claim defendant did not prevail on counterclaim and was not entitled to costs on it, 116 C 371
counsel fees not allowed, though complaint had some aspects of interpleader but contained no claim for judgment that parties interplead; action treated as one for declaratory judgment, 117 C 496
in equitable action in discretion of court, 119 C 367
——ordinarily awarded on same basis as in actions at law, 119 C 367
——where judgment gave plaintiff a part but not all of relief he claimed, in action at law he would be entitled to costs, 119 C 367
——where ultimate judgment, after appeal, will give defendant part of relief claimed in cross-complaint, costs must await final disposition of case, 119 C 367

§ 3. In Particular Actions

allowed on foreclosure as an addition to mortgage debt; become a further lien on the land, K 231
taxable against minor on probate appeal, when, 1 R 325
joint defendants on scire facias are each entitled to, 1 R 550
of arbitration, is within discretion of arbitrators, 2 C 694
acceptor with funds is not liable for costs in suit against drawee, 3 C 105
costs discretionary in forcible entry and detainer where no rule for measuring costs given, 4 C 80
not taxable for or against person named as appellee from probate and not appearing, 6 C 311
wife not entitled to costs, on securing a divorce, 18 C 421
on probate appeal from acceptance of administrator's account are paid by whom, 19 C 538
plea and notice considered together in trespass quaere clausum fregit, as respects costs, 21 C 80
refusal to tax for either party on probate appeal is no error, 22 C 271
count for money lent and special count on memorandum check, 28 C 358
——defendant successful on special count cannot recover costs, 28 C 358
statute de costs in trespass *held* not retrospective, 35 C 124
trespass for diversion of water; general issue; plaintiff recovers no more costs than damages, 36 C 151
discretionary with court on probate appeal for disapproval of minor's selection of guardian, 38 C 308
what allowed, where each party in replevin is partly successful, 40 C 111
statute de no more costs than damages is inapplicable to replevin, 48 C 140
petitioner for highway is now allowed no costs for attendance and witnesses, 48 C 292
suit by legatee to recover amount due and for construction of will; *held* expenses do not come out of the estate, 50 C 577
on an accounting are discretionary with court, 51 C 134
——not reviewable by Supreme Court, 51 C 135
under statute de costs in tort cases, record in trespass quaere clausum fregit must show

title directly in issue to take case out of, 52 C 255
——whether finding of full costs involves presumption of value more than $50, quaere, 52 C 259
plaintiff in replevin entitled to full costs even though he fail to prove title to all the articles replevied, 54 C 83
——defendant is only entitled to witness fees on that part of case decided in his favor, 54 C 83
whether "costs" in suit for breach of warranty include counsel fees, quaere, 61 C 403
in suits for construction of wills, 65 C 161, 72 C 29, 494
on proof of tender; where plaintiff proves claim on general issue, and defendant proves tender, 67 C 74, 80 C 233, 87 C 158
allowance of costs in mandamus; good faith of judge against whom writ issues; appeal, 68 C 219
in action to compel child to support parent, 73 C 607
discretion of court as to costs, on probate appeal, 76 C 654
in tort action in City Court where judgment is less than $100, 80 C 434
in foreclosure, are thrown on defendant only when he seeks to redeem, 81 C 442
in scire facias, 81 C 622
costs cannot exceed damages under statute in tort action, 86 C 710
on appeal from compensation commissioner each party pays own costs, 89 C 154
no costs in mandamus at common law; when allowed now, 90 C 639
in accounting costs go to prevailing party, 93 C 146
in condemnation proceedings, 100 C 412
are discretionary with Superior Court upon appeal from probate, 101 C 401
proof of tender carries costs only when pleaded as sole defense, 102 C 57
in action to construe will, to be borne by entire estate, though only one trust fund involved, 102 C 503
in suit for advice, counsel fees and expenses payable out of entire trust fund, where all but one beneficiary contest that one's right to part of it, 105 C 744
on reservation to determine rights of creditors or assignees of beneficiary to reach income of trust, costs should be paid from income, 107 C 10
discretion of court in taxing costs on appeal from probate, 107 C 281
——plea to jurisdiction sustained may carry costs, but not motion to erase, 107 C 281
statute giving costs in mandamus proceeding applicable only where action is to enforce private right, 111 C 427
——where to enforce public duty no costs can be awarded, 111 C 427
costs awarded State in mandamus and waived by it cannot be collected by relator where proceeding is one to enforce a public duty, 112 C 662
statute requiring recognizance for costs applies only to actions where costs are taxable; not applicable to habeas corpus, 113 C 737
none are taxable in habeas corpus, 113 C 737
——discretionary in equity actions, 113 C 739
costs not recoverable in mandamus at common law, 115 C 98
——statute allows them in trial court only when return is made and hearing had, 115 C 98
——but costs are allowable on appeal to Supreme Court, 115 C 99
no costs or judgment fees against highway commissioner in action for accident from lack of fence on road, 121 C 88
question of costs and an allowance in action of interpleader in discretion of court, 125 C 581

COUNSEL FEES

See Attorney at Law § 5; Divorce § 9

COUNTY

liable for escape through insufficient jail, unless there be a certain remedy against an individual, K 318, 1 R 451
judgment for escape should be for special damage to the creditor, not for his debt, 1 R 126, 155, 278, 357, 505
action at law does not lie against county, 1 R 158, 2 R 30, 12 C 406
county not liable if escape was possible only by means of external force, 2 R 196
damage for escape may be amount of debt with interest, 2 D 195
cannot be made garnishee on foreign attachment, 12 C 409
county commissioners may, under statute, lay out highway through creeks and salt marshes, 22 C 187
——while so acting disqualifications of judges are inapplicable, 22 C 190

county commissioners have no power to take from sheriff supervision and control of workhouse, under guise of appointing an assistant to deputy sheriff, 25 C 103
county commissioners not disqualified by age from laying out highway, 25 C 186
county commissioners have discretion to grant or deny license to sell liquors, though applicant be recommended by selectmen under statutes, 49 C 480
——their exercise of discretionary power not controllable by mandamus, 49 C 480
interest of Hartford county in old state house building rests either on estoppel or prescription, 49 C 561
in revocation of liquor license, county commissioners act as a board and not as a court, 49 C 591
statute de county commissioners did not constitute a court within meaning of the Constitution, 50 C 324
——no objection that statute did not provide for a jury, 50 C 324
——or for an appeal, 50 C 327
——writ of prohibition will not issue against county commissioners, by Superior Court, 50 C 324
county commissioners can take cognizance of application for revocation of liquor license for violation of law while criminal prosecution for same violation is pending, 50 C 325
license by county commissioners for sale of intoxicating liquors upon fees paid *held* not a contract between State and licensee, 50 C 328
——license of this character is not property in any constitutional sense, but is an exercise of police power, 50 C 328
bond of county commissioners, to State *held* to cover acts done as treasurer of the board, 50 C 582
action on bond of county commissioners can be maintained by the State under statute, 50 C 582
——*held* that surety on bond could not under circumstances make associate commissioners codefendants, 50 C 582
county homes are not penal or reformatory institutions, nor intended for detention of children for punishment or moral reformation, 61 C 267
——are an exercise of the guardianship assumed by the State parentis patriae, 61 C 267
——under statute, "temporary" does not limit control of the board of management, 61 C 267
board not bound to permit withdrawal of child from county home under any circumstances, 61 C 268
manager of county home ought not, except in peculiar cases, to interfere with, or fail to provide opportunities for, intercourse of the parents with the children, 61 C 270
religious training in county home is in the discretion of board of management, except for such limitations as are imposed by the Constitution, 61 C 270
——board of management *held* not to have abused its discretionary powers or erred in judgment, 61 C 264
parents of children committed to county home cannot as a matter of right dictate the religious training of the children, 61 C 270
cannot escape liability to pay for repair of roads because its treasury is empty; officers must provide funds, 70 C 435
action of county commissioners if their discretion is unfairly exercised can be reviewed and set aside, 85 C 701
in making appointment of county commissioners, General Assembly acts as appointing body and resolution making appointment does not amend a statute so as to extend term of office, 87 C 594
——when Governor is empowered to fill vacancy, if Legislature fails to agree on a successor in office he can anticipate a vacancy, 87 C 594
——right of Governor to fill vacancy after expiration of statutory term, if Legislature fails to elect, 87 C 594
mechanic's lien does not lie against county buildings, 90 C 13
right to give child in adoption without notice to or removal of parent or guardian, 110 C 463
parent may at any time apply for revocation of order of commitment and termination of guardianship of county home, 110 C 468
only Juvenile Courts and Courts of Probate have power to commit children to county temporary homes or other institutions, 115 C 596
county commissioners not vested by statute with power to determine whether new county building or court house should be built, 124 C 611
——review of relevant statutes, 124 C 616
——erection of court house a county matter, 124 C 611
——power given to county meeting (of representatives and senators) to have general supervision over county affairs, plus fact that it is sole body which can lay taxes, is adequate statutory authority to determine when building should be erected, 124 C 611
——vote of county meeting in Fairfield de purchase and alteration of building for county court house and authorizing county commissioners to finance same by bond issue and tax *held* determination by meeting that new court house should be built, 124 C 612

——statute providing that Superior Court should be held at Stamford whenever suitable quarters were provided without expense to county, nil sig., since Court of Common Pleas could use building, 124 C 612
——county meeting alone has authority to impose county tax over $600, 124 C 623
——vote defective since it left indefinite amount of balance to be raised by tax and in effect gave county commissioners power to determine amount of tax, 124 C 612
——since illegal provision could not be severed from rest of vote, no duty imposed on county commissioners to proceed with project, 124 C 613
adoption of report of committee appointed at prior meeting effective though appointment of such committee not in notice of that meeting, 124 C 621
——county meeting could act without report of any committee or upon report of a committee voluntarily organized or appointed without authority, 124 C 621
county is legal entity distinct from State, 127 C 53
——payments to public hospitals for patients sent by county not restricted to $8 a week under statute de charges to be made when expense is to be paid by State, 127 C 53
enumeration of powers and duties of county, 127 C 57
intendment of statute referring to "county" included judicial district of Waterbury, 127 C 544

COUNTY COMMISSIONERS

See County

COURT OF COMMON PLEAS

See also Jurisdiction

appeal does not lie from County Court to Superior Court on report of auditors in book debt, 13 C 528
execution may issue at any time though case be not formally remanded, 21 C 530
court cannot be ousted of its jurisdiction by uniting the indebtedness stated in the courts, 36 C 386
ad damnum clause as fixing jurisdiction of court, 39 C 133, 41 C 51, 140, 42 C 90
has no jurisdiction of writ of error in criminal case, 39 C 277
cannot foreclose for default of interest on a $3000 note, 41 C 286
is not ousted of jurisdiction on foreclosure for interest in addition, 41 C 419
eight distinct interest coupons may be joined in one count, to confer jurisdiction on court, 41 C 542
may punish for contempt, 43 C 267
judge of Superior Court or Common Pleas Court may transfer cause to same court in another county after jury has disagreed, 44 C 35
——record need not show reasons why case is transferred, 44 C 35
excess of judgment over jurisdictional limit regarded as interest, when, 44 C 35
in suit for partition or sale of property the matter in demand is to be determined by the value of the property, 50 C 256
where in suit by one tenant in common against another for expenses incurred in repairing property, defendant in cross-complaint asks for sale of the property, and property of value beyond jurisdiction of court, cross-complaint to be dismissed, 50 C 256
combining of the claims in several counts will not give jurisdiction where the separate counts are not sufficient for the purpose, 59 C 531
ejectment in Court of Common Pleas; plea that property is worth $3000; reply disclaiming recovery of all the land; duty of trial court under the circumstances, 60 C 82
how inferior to Superior Court; issuance of mandamus against, by Superior Court, 67 C 177
Court of Common Pleas enjoined receiver appointed by Superior Court; *held* it had not clearly exceeded its jurisdiction, 68 C 543
mutual consideration between the two courts, 68 C 550
amount in demand determined from allegations of complaint and the claim for damages, 75 C 616
——where it subsequently appears amount actually recoverable is smaller than jurisdiction of court, jurisdiction not affected, 75 C 616
criminal jurisdiction, 76 C 549
cannot grant equitable relief against judgments pending in Superior Court, as in interpleader between assignee of judgment in action pending in latter court, and one garnisheeing it, 80 C 593

cannot grant new trial in justice court on application for equitable relief against judgment secured there, 80 C 642
action to set aside fraudulent conveyance not out of jurisdiction because there is evidence that land cost defendants $1200, where nothing in record to show whether evidence deserved or received credence, and no statement of value in complaint or judgment file, 83 C 109
plea in abatement made before Town Court may be renewed in Court of Common Pleas, 85 C 327
if each count is for less than $1000 but aggregate is in excess, court has jurisdiction, 85 C 679
criminal Common Pleas Court not empowered to consider appeal of civil action from Borough Court, 86 C 191
judgment must be rendered before close of term following that in which cause is tried, 86 C 552
has jurisdiction to set aside deed and vest title where plaintiff's interest is within jurisdiction but value of land is in excess, 87 C 294
act of 1903 does not give Common Pleas Court of New Haven County jurisdiction concurrent with Waterbury District Court, 89 C 196
right of appeal from City Court of Bridgeport to Common Pleas Court repealed, 92 C 568
jurisdiction in personal actions as dependent on residence of parties, 96 C 281
statute concerning jurisdiction of actions arising in District of Waterbury, construed, 96 C 281
Common Pleas Courts, though limited as regards amount involved, have otherwise an unlimited jurisdiction, 98 C 90
limited as to amount involved but otherwise are courts of general jurisdiction, 99 C 90
where appeal to them is provided without procedure being fixed, they act by common-law powers, 99 C 90
may hear case de novo if circumstances require, 99 C 91
right to admit to bail in cases appealed to them pending trial, 99 C 92
in action to Court of Common Pleas, jurisdictional amount may be total of small items where, by custom or agreement, account is treated as continuing one, 104 C 728
practice of bringing cases to Superior Court which should have been brought to Court of Common Pleas criticized, 111 C 666
appeal from Borough Court of Wallingford to Court of Common Pleas for New Haven County not limited to cases of $100 or less, 114 C 582
in action on information by prosecuting attorney court is exercising original jurisdiction, 115 C 599
appeal from action of zoning board of appeals in granting license to sell gasoline, improperly taken to Court of Common Pleas, and appeal properly stricken from docket, 116 C 553
——proceeding was one under gasoline statutes not zoning regulations, 116 C 553
——particular provisions in gasoline statutes constitute exception to general provisions in zoning laws de appeal to either court, 116 C 553
function in an appeal from action of zoning board of appeals (Hartford) denying application for variation of application of clause excluding parking station from business zone, 117 C 527
terms of Court of Common Pleas for the district of Waterbury, 123 C 172

COURT OF PROBATE

See Probate Court

COURTS

See also Appeal; Appeal to the Supreme Court; Court of Common Pleas; District Court of Waterbury; Judgments; Jurisdiction; Justices of the Peace; Juvenile Court; Municipal Courts; Probate Court; Records § 1; Removal of Causes; Superior Court; Trial

appeal cannot be taken to an adjourned term, K 366, 19 C 5, 24 C 145
court to be technically described by the day and month of its commencement, 7 C 9
clerk of court derives his authority to grant execution from record; has no authority in absence of record, 7 C 9
day on which any act is done may be shown if justice requires it, 7 C 10
in correcting mistake in record clerk acts in a ministerial capacity, 7 C 141
actions may be brought to adjourned term when, 10 C 488

an execution may be renewed by clerk by changing its date, 17 C 144
constitutes but one day; viz., the first, 19 C 4
power of court to enforce its decrees, 21 C 196
clerk may at any time fill in blanks in record left for insertion of costs, 21 C 526
entries by clerk in docket books are not records, 25 C 338
clerk should re-enter cause on reversal of an order erasing it from docket, 35 C 103
issuance of mittimus by clerk after term, 36 C 251
regular term is not extendable beyond time prescribed for another regular term, 43 C 35
——even to finish trial of a single case, 43 C 34
——rule *held* inapplicable to terms of different character, 43 C 35
——by agreement a case may be heard after term and judgment rendered as of the term, 43 C 34
a mistake in copy as to term followed by an intentional default; equitable relief will be refused, 48 C 30
party cannot refuse obedience to order of court because he deems it erroneous, or because it is erroneous; until revoked or reversed it is the law of the case, 63 C 566
Superior Court holding stated term is "in session" within statute during interval from adjournment on one day to opening on following day, 63 C 581
duty to see that no judgment is rendered against one who has had no opportunity to be heard, 67 C 9
discretion to prevent divorce proceedings being made use of for immoral purposes, 68 C 187
under Practice Act "court" means that tribunal itself as established to administer pubic justice, not the judge as opposed to the jury, 68 C 286
power to prevent fraudulent advantage being obtained by legal process, 68 C 472
general duties of clerk of Supreme Court, 70 C 337
judge may take issue depending on documentary proof from jury, 78 C 96
in absence of clerk, his assistant is the clerk, 80 C 619
what courts cannot enforce, they cannot decree, 82 C 392
assistant clerk of Superior Court has same powers and duties as clerk, 83 C 134
court of own motion should dismiss action in fraud of the public, 83 C 430
clerk's actions in performance of duty are acts of the court, 84 C 458
not bound by estoppel, but are by principles of fair dealing, 93 C 185
limited to the declaration and enforcement of the law as the legislature enacted it, 95 C 50
administrative matters cannot be imposed on courts, 97 C 457
at common law one term could not overlap another, 97 C 557
making findings, completing records, etc., clerical rather than judicial acts, 97 C 568
——judge may perform them after passing age limit, 97 C 563
court having jurisdiction is entitled to determine every question which arises in the cause without interference from any other tribunal, 100 C 499
court should dismiss case whenever it finds it is without jurisdiction, despite previous rulings, 101 C 356
jurisdictional defect may be raised at any time, directly or collaterally, 101 C 356
meaning of term "court"; justice court; constitutional courts, 102 C 22
General Assembly cannot confer administrative functions upon the courts, but it may authorize them to review the actions of administrative bodies, 103 C 65
statutory order of removal to proper court may be made after return day, 105 C 671
provision in contract for litigation of disputes in specified courts is contrary to public policy and void, 107 C 545
duty of clerk to cooperate with court and counsel to abridge record, 108 C 659
one of duties of clerks to draw up and sign judgment files, 109 C 239
will not adjudicate where they cannot enforce, 110 C 36
appraisers appointed by court are public agents acting in quasi-judicial capacity, 111 C 490
——authority may be executed by majority if all are legally notified, 111 C 490
order confirming judicial sale cures all defects and irregularities, 111 C 605
practice of bringing cases to Superior Court which should have been brought to Court of Common Pleas criticized, 111 C 666
right of court in case of emergency to adjourn to another building than courthouse, 113 C 377
——to hold court in another town than that stated in statute, 113 C 377
where there is no evidence to contrary, it will be presumed that action of court was regular and in accordance with law, 113 C 594
court has inherent power to order inspection of documents of party; discretion of court, 114 C 165
decisions of Supreme Court of United States de federal statutes are of controlling importance in the courts of the States, 115 C 326

duty of court to act in election controversies; should do so only when serious injustice would otherwise result, 116 C 36
must perform many acts of administrative nature, such as appointment and removal of clerks, 116 C 409
——under no more stringent limitations than are executive or legislative department in similar situations, 116 C 409
unless application and reasonable development of accepted principles of law justify recovery, the remedy, if any, rests with Legislature not the courts, 116 C 526
when Legislature has enacted statute de operation of motor vehicles which is precise and clear duty of court to apply it without limitation or exception, 116 C 576
with exercise of discretionary powers courts rarely interfere; only when fraud, improper motives, etc., characterize result, 116 C 588
policy of State that all courts shall administer legal and equitable rights and apply legal and equitable remedies in favor of every party in one and the same suit, 117 C 240
history of laws concerning terms and sessions reviewed, 117 C 639
not unusual for different courts to come to different conclusions upon the same issue, 118 C 196
where Legislature clearly defines cause for removal of public officer, it is duty of court, if it finds cause to exist, to remove officer, 119 C 655
——it may overlook minor unintentional infractions of law upon principle de minimis non curat lex, 119 C 655
clarification of distinction between "term" and "session," 123 C 15
not concern of courts to pass on economic advantages of particular piece of legislation; such matters are for Legislature: they come within purview of police power, 127 C 126
history of statutes concerning court stenographers, 128 C 290

COVENANTS

See Deeds §§ 9, 10; Landlord and Tenant § 6; Vendor and Purchaser

CREDITOR'S BILL

See Equity § 9

CRIMINAL CONVERSATION

See also Adultery

CRIMINAL LAW AND PROCEDURE

§ 1. In General
2. Jurisdiction and Venue
3. Indictment and Information
4. ——In General
5. ——Two or More Offenses or Counts
6. ——Statutory Crimes Generally
7. ——Particular Cases
8. Plea
9. Trial
10. ——In General
11. ——Evidence
    (1) In General; Burden and Sufficiency of Proof
    (2) Witnesses; Competency and Credibility
    (3) Admissibility
12. ——Election of Trial to Court
13. ——Argument and Conduct of Attorneys
14. ——Jury
15. ——Verdict

16. Punishment; Sentence; Suspension; Probation
17. ——In General
18. ——Suspension and Probation
19. ——Indeterminate Sentence; Sentences as Concurrent or Consecutive
20. Appeal
21. Miscellaneous Crimes and Misdemeanors

Note: Cases dealing with the main crimes are listed under the titles for those crimes, such as Burglary, Forgery, Homicide, etc., though where the material is pertinent to the subdivisions of this title it may be repeated here. Under § 21 are listed cases of miscellaneous crimes and misdemeanors which have no separate title. Cases concerning charge to jury and comments on evidence are listed under Charge to Jury §§ 26, 38, 40, and concerning confessions under Evidence § 89.

See also Accomplice and Accessory; Arrest; Bail; Conspiracy; Evidence; Extradition; Justices of the Peace; Juvenile Court; Mittimus; Prisons; Reformatories; Search and Seizure; State's Attorneys; Warrant

§ 1. In General

principal not liable criminally for unauthorized act of servant or agent; doctrine of ratification *held* not applicable, 6 C 13

what constitutes high crime and misdemeanor at common law, 6 C 417, 475

nolle prosequi leaves matter just where it stood before prosecution, 31 C 576

degree of mental unsoundness necessary to excuse criminal act, 39 C 594

information qui tam is a criminal proceeding, 43 C 169

law applicable to alleged abandonment of conspiracy to escape prison, before fatal shot was fired, 47 C 138

rules as to petition for new trial for newly-discovered evidence in civil case *held* applicable to criminal cases, 48 C 94

proceedings de commitment to reform school are not criminal, when, 51 C 477

"convicted" under statute means when accused has pleaded guilty or been found guilty by jury, though there has been no sentence or judgment, 53 C 487

not necessary under statute in binding over to certify offense as aggravated; or to use words of statute, 56 C 189

test whether a proceeding is civil or criminal depends on whether the purpose is to redress a private or a public wrong, 57 C 288

felony defined and discussed, 57 C 466

authority to act in foreign charter will not justify a crime, 66 C 250

issuance of warrant where accused is at large after sentence, 67 C 360

liability of principal for criminal act of agent, 69 C 89, 73 C 18

judgment in civil action not bar to criminal prosecution for same act, 69 C 212

foundation of our common law as to crimes, 70 C 109

effect of statute imposing penalty for common-law crime, 70 C 113

right of counsel to access to prisoner, 72 C 728

agency for another no defense, 79 C 468

intoxication as defense, 79 C 595, 87 C 6

actual criminal intent not necessary in contempt, 80 C 671

the fact that in proving one crime, another is proved, is immaterial, 82 C 213

one may be guilty of an act that he is incapable of committing alone, 82 C 214

hearing before justice of the peace is an inquest; does not bar subsequent prosecution in proper court, 83 C 287

penal statutes construed strictly against accused and liberally in his favor, 83 C 300

persecutory delusion; uncontrollable impulse, 84 C 83

high crime nearly equal to felony but does not come within its definition, 84 C 371

penal statute is strictly construed for benefit of citizens, 85 C 482

any influence, knowingly and intentionally exerted to make another commit a crime, renders person liable as aider and abettor, 86 C 165

action may not be criminal though statute prescribes proceedings similar to criminal action; what determines it, 86 C 191

crime is felony or misdemeanor according to punishment prescribed, 86 C 627

degree of mental incapacity rendering person not criminally responsible for acts otherwise criminal, 87 C 6

knowledge and silent acquiescence in a plan to commit a crime does not make one guilty, 88 C 165

what are "infamous crimes," 95 C 501

what are "felonies," 95 C 504
whether knowledge is or is not to be implied in defining a crime is determined from scope of act; ignorance often no excuse, 96 C 306
duty of courts to protect aliens, 96 C 619
——to look behind stipulation waiving the protection of fundamental constitutional guarantees, 96 C 619
public officers not to be compelled to surrender property held in good faith as evidence, 97 C 543
nature of offense of attempting to commit crime, 99 C 438
what constitutes common-law crime, 99 C 443
solicitation to commit a crime is itself an offense at common law, 99 C 444
constitutional protections to criminals to be construed in light of public interest in the detection of crime, 101 C 224
criminal responsibility for another's acts largely governed by statute, 102 C 634
injunction under federal prohibition act is civil, not criminal, relief, 103 C 7
when penal statute prevents civil recovery, 103 C 21
penal statute to be strictly construed, but not to point of crippling legislative intent, 103 C 138
criminal statutes are not to be enlarged beyond their letter the better to cure a mischief, 103 C 138
——nor narrowed by hypercritical construction so as to defeat intent, 103 C 138
infamous crime defined, 104 C 257
moral turpitude defined, 104 C 257
where it is statutory offense to "suffer" or "permit" anything, it means lack of reasonable care as well as affirmative or voluntary act, 104 C 493
criminal statutes have no extraterritorial force, 105 C 374
upon acquittal, accused entitled to discharge, unless State asks permission to appeal, 106 C 114
what constitutes double jeopardy, 106 C 114
bench warrant may be issued in any case of which court has original jurisdiction, 106 C 720
penal statute must state the offense definitely and certainly; driving "recklessly" and "so as to endanger life," etc., are sufficient, 108 C 209
two or more offenses may arise out of one transaction, 108 C 209
——to be regarded as identical only when same evidence would establish commission of both, 108 C 209
——driving automobile recklessly, so as to endanger life or property, and under influence of liquor, 108 C 209
——first two not merged in latter, 108 C 209
——merger of misdemeanor and felony takes place only when same act constitutes both, 108 C 209
——tendency is to narrow common-law rule as to merger, 108 C 209
——acquittal of charge of driving so as to endanger life or property does not bar prosecution for reckless driving, 108 C 215
garnishment not enforceable as to property held by officer as evidence against accused, 109 C 316
——or as to property connected with some other crime with which possession is chargeable, 109 C 316
——but creditor may resort to property after purpose of retention satisfied, 109 C 316
criminal court has power to make order concerning property held as evidence when no longer required, 109 C 316
end of criminal procedure sought is conviction of largest possible number of guilty persons compatible with certainty of acquittal of innocent, 109 C 498
intent to commit crime may be abandoned before it has by act become attempt, 110 C 303
law takes no cognizance of mere mental purpose to abandon commission of crime; nor if expressed in spoken word unless supported by conduct, 110 C 303
right of self-defense of one assailed with deadly weapon in place of business, 110 C 303
proceedings before statutory justice court investigating crimes; constitutionality, 110 C 482
statute de disposition of seized liquors not a criminal statute; inhibition against ex post facto law not applicable, 112 C 169
crimes whose penalty may be imprisonment in state prison and involving moral turpitude are infamous; adultery, 112 C 269
abandonment of conflict; accused must have done substantial act to show abandonment was real not feigned, 113 C 209
where information alleged crime committed in this State and judgment found accused guilty as charged that crime was committed in this State conclusively established, 113 C 343
corporation may commit crime involving intent to steal or misappropriate property, 114 C 354
common-law rule that child under seven could not commit a crime establishes incapacity, 115 C 593
age of one committing forbidden act an element necessary to make that act a crime; illustrations, 115 C 593
penal statute should receive a strict construction, and no act should be held within it which does not fall within its spirit and fair import of language, 118 C 267

——but the purpose of rule is not to enable person to avoid clear import of law through technicality, 118 C 267

——does not require that the narrowest technical meaning be given the words used in disregard of context and frustration of intent, 118 C 267

receiver of stolen goods may be prosecuted though person who committed theft has not been convicted, 119 C 31

where act is penalized if performed "wilfully," guilt is conditioned, not on intentional commission of prohibited act alone, but on its commission with evil intent or guilty purpose to violate the law, 119 C 534

penal statutes to be strictly construed; meaning cannot be extended by presumption or intendment, 121 C 162

in determining whether acts are within prohibition of one of our criminal laws, statute need not be given narrow technical meaning contrary to legislative intent falling within its spirit and fair import, 124 C 165

there seems no reason why criminal law and procedure should not progress with progress of age, 126 C 70

where information was filed in light of report made by grand jury, but proceedings upon it were independent and trial was fair, defects in procedure in connection with grand jury nil sig., 127 C 544

employer cannot be held criminally liable for negligence or misconduct on part of employees of which he had no knowledge, 127 C 574

where one does act he knows to be evil or immoral, ignorance that it was expressly prohibited by law unimportant, 127 C 585

——in absence of evidence to the contrary a man is presumed to have intended to commit the acts which he did and, if unlawful, guilty intent may be found, 127 C 585

Legislature may properly make violation of regulations criminal act, 128 C 160

test of certainty in criminal statute, 128 C 165

fact that defendants convicted on second trial does not warrant Supreme Court in overlooking harmful error, 128 C 181

defendant charged with attempt to procure miscarriage raised, at most, possible, not reasonable, doubt as to guilty intent, 128 C 297

§ 2. Jurisdiction and Venue

action qui tam of criminal nature may be brought in county where complainant lives, K 401

proper finding where offense may be within jurisdiction of court binding over, 35 C 319

want of legal warrant as ousting jurisdiction, 75 C 355

justice of the peace, in criminal matters, can only investigate, and bind over or discharge, if punishment may be state prison sentence, 83 C 286

accused can waive any matter except jurisdiction; illegal bail, 89 C 303, 93 C 361

venue of nonsupport charge is place of husband's residence, 93 C 360

cannot confer jurisdiction by consent or waiver, 93 C 361

on appeal from Town Court to District Court of Waterbury jurisdiction same as Town Court, 93 C 361

——unless an original complaint should be filed, 93 C 365

although City Court's jurisdiction is fixed by charter "notwithstanding any general statute," it may nevertheless be enlarged by later statute specially applicable to City Courts, 95 C 600

venue of crime of uttering forged instrument; check drawn on bank in one county but cashed in another, 96 C 428

Superior Court has no original jurisdiction of offenses within final jurisdiction of local courts, 97 C 598

change of venue properly denied where it must rest simply on statement of counsel as to publicity given case, 98 C 454

motions for change of venue and separate trials within discretion of trier, 100 C 209

——rulings thereon will not be disturbed unless discretion abused, 100 C 209

on motion for change of venue accused must show that fair and impartial trial cannot be had, 103 C 454

——discretion of court in passing upon motion, 103 C 454

Superior Court has jurisdiction of all crimes of which exclusive jurisdiction is not given to other courts, 106 C 701

motion for change of venue because of newspaper article, *held* properly denied, 109 C 571

granting change in venue is in court's discretion; denial is reviewable only for abuse; to be granted only with caution, 109 C 572

discretion of court to deny change of venue in criminal case, 110 C 55

one State or sovereignty cannot enforce penal laws of another nor punish offenses committed in or against another, 113 C 288

proceedings in Superior Court or Court of Common Pleas upon information of prosecuting officers are an exercise of original jurisdiction, 115 C 599

justice of peace *held* to have final jurisdiction of offense where maximum sentence was one year, as it could not be to state prison under indeterminate sentence law, 115 C 600

granting or denial of motion for change of venue rests in discretion of trial court, 126 C 61

provision that person violating nonsupport statute may be prosecuted before any court in State in same manner as if offense had been committed in territorial jurisdiction of that court, constitutional, 129 C 570
nonresident may be tried in this State for crime which he, though never personally present, procured to be committed here, 129 C 573

§ 3. Indictment and Information

§ 4. ——In General

allegations in indictment not impertinent or foreign, must be proved, though prosecution may be sustainable without such averment, 3 D 283
what words import a joint offense, 2 C 313
indictment for inferior crime is supported by proof of higher crime, if it is an essential part of such higher crime, 9 C 260
cumulative penalties for successive convictions, 9 C 563
——information need not allege it to be first offense, 9 C 563
when amendment of information is allowable, 10 C 471
——amendment of indictment is not allowable without consent of grand jury, 10 C 471
distinction between indictment and information, 12 C 451
Constitution of Connecticut, Article I, § 9, construed; a complaint by tithingman or grand juror is not an indictment or information within, 12 C 451
what constitutes certainty in indictment, 19 C 296
figures may be used to express dates, 19 C 296, 34 C 294
complaint should be reasonably certain; technical nicety not required in complaint, 19 C 297, 28 C 231
"a certain house, store, or shop," describes one place only, 19 C 297
"on or about" a certain day *held* sufficient allegation of time, 19 C 297, 34 C 293
——complaint not invalid because era is not specified, 34 C 294
offense should not be laid in the alternative, 19 C 500
what constitutes surplusage in complaint; surplusage need not be proved, 24 C 288
failure to aver in what county offense was committed is not material, 25 C 50
amendment allowed where information fails through variance, 29 C 463
original information could not be filed in Superior Court for offense of which it did not have original jurisdiction, 30 C 466
averment that name of party on whom the crime was committed is unknown, need not be proved, 30 C 507
——if averment is shown to be untrue accused may be acquitted, 30 C 507
state's attorney may file new information on binding over, 35 C 319
in cases bound over to Superior Court by justice of the peace new information not necessary, 38 C 39
date charged is immaterial if the date proved be within the Statute of Limitations, 40 C 475, 42 C 157
——nor need any exact date be proved, 40 C 476, 42 C 157
——if the time be sufficiently certain to bar second prosecution for same charge, 40 C 476
accused has no legal right to be present before grand jury, 47 C 104
filing of a new information by state's attorney is not a new accusation, 49 C 437
——is merely a continuation of proceedings begun by grand juror, 49 C 437
——if grand juror's complaint was reasonable under statute, accused cannot plead limitation in the Superior Court, 49 C 437
proper office of the "videlicet" in complaint, 51 C 3
offense involving continuous action from day to day may be so alleged, 54 C 2
——cruelly overworking oxen from 1st to 14th of January, 54 C 2
never necessary to aver more than the legal effect of the acts constituting the offense, 54 C 92
where knowledge of defendant is an ingredient of an offense, it must be alleged, 60 C 106
——otherwise a demurrer to the information will lie, 60 C 106
issuing original information in Superior Court, 64 C 212
necessity of identifying person against or with reference to whom a crime is committed; illegal sale of liquor to person unnamed, 66 C 558
allegations as to former conviction of similar crime; defects cured by verdict, 68 C 512
general demurrer sufficient in criminal cases, 72 C 604, 73 C 18, 90 C 98, 662
right of prosecuting attorney to change information, in appealed case; charging offense beyond jurisdiction of original court, 75 C 104
——effect, where accused already in custody under similar charge, 64 C 212
amendable defects not properly taken advantage of are not ground of new trial, 80 C 614
necessity of correctly alleging date of crime, 81 C 98
clearness and certainty, not strictness, necessary in indictments, 81 C 696, 85 C 324, 93 C 646
intent, if element of crime, must appear in indictment, 81 C 699

information against accessory may charge either the offense directly or the fact of aiding or abetting, 82 C 214
right of prosecuting attorney to bring information, 83 C 294
jury may be told that filing of information should not influence them, 92 C 658
on appeal to District Court of Waterbury from Town Court, course open to prosecuting officer, 93 C 365
——effect of filing a substitute complaint, 93 C 365
if prior convictions are relied upon to enhance penalty, they should be stated, 94 C 698, 96 C 172
inclusion of three prior convictions where statute refers to only two is surplusage, 94 C 698
procedure where accused is charged under statute increasing penalty for prior convictions, 96 C 161
right of State to insert alias, 98 C 460
original information does not lie in Superior Court for offense within final jurisdiction of local court, 97 C 598
sufficiency of information; how attacked and when, 100 C 639
——not to be considered on appeal by State from direction of verdict for accused, 100 C 639
technical defect in criminal information cured by verdict, 101 C 8
——such a defect must be attacked at trial, 101 C 8
when information adjudged insufficient, accused may be held on same bail pending arraignment on fresh charge, 106 C 114
right of state's attorney to file original information, 106 C 702
——where accused are in jail under mittimus of Town Court bound over to subsequent term, grand jury may indict them and they may be brought into court on bench warrant, 106 C 702
allegation de third offense under Indeterminate Sentence Act should be in original information; supplemental information after conviction properly dismissed; correct procedure, 110 C 298
function of information or indictment is to charge person with crime the nature of which is set out therein, 110 C 299
——if it does not set out facts constituting a crime it is open to demurrer or motion to quash, 110 C 299
substitute information by state's attorney dates back to original to avoid statute, 112 C 121
information filed more than year after offense, in substitution of complaint filed five days thereafter is within Statute of Limitations, 112 C 121
how information may be drawn to charge one as accessory, 113 C 767
offense may be set out either by using name of offense at common law or statute or by defining it in terms thereof or of substantially same meaning, 118 C 501
information may charge offense merely by common-law or statutory name or by merely stating so much of definition of offense as will give notice of what offense is intended, 119 C 70
——where allegations fail to inform accused of particulars sufficient to enable him to prepare defense or of nature or cause of accusation he has right to bill of particulars, 119 C 70
——trial court may in any case, if it deems it in interest of justice, order bill, 119 C 70
practice of instituting criminal proceedings except for capital crimes upon information of state's attorney without preliminary hearing, not prohibited by Constitution, 127 C 544
if there was uncertainty, remedy was by motion for more specific statement, 128 C 407
——appeal on ground of uncertainty not sustainable unless it appeared that defendants were prejudiced in defense on merits, 128 C 407

§ 5. ——Two or More Offenses or Counts

charging one offense in single count, confines prosecution to one offense in proof, 10 C 373
prosecutor cannot add new count after statute has barred the offense, 12 C 106
duplicity is cured by verdict, in criminal cases, 24 C 530, 28 C 231
——as by verdict of guilty as to one offense, and not guilty as to the others, 24 C 530
two counts, with but one formal conclusion, in complaint, *held* to charge two offenses, 28 C 231
several acts, each representing a stage in the same offense, may be joined in one count, 44 C 150
——though each is a distinct offense, 44 C 150
——examples, 44 C 151
charge that accused did "sell" and "exchange" intoxicating liquors, *held* not bad for duplicity, 50 C 99
joining offenses, 75 C 107
court may compel State to elect between counts, 75 C 201
charging conspiracy and acts done thereunder; no duplicity though acts constitute crimes in themselves, 75 C 206
no election as matter of right on indictment charging same offense committed at two different times, 81 C 1
where one count charges assault with intent to maim and another with assault with a dangerous weapon, they are different aspects of one offense, 95 C 140

relation of counts to each other, 96 C 427
joinder of count charging two as principals with count charging one as principal and one as accessory, 98 C 460
——refusal of trial court to require State to elect, no abuse of its discretion, 98 C 461
merger of crimes charged, 99 C 114
charge that accused did unlawfully sell and offer for sale intoxicating liquors is not bad for duplicity, at least after verdict, 101 C 8
identity of offenses charged; merger, 108 C 209
manufacture of liquor for sale and keeping with intent to sell are separate offenses; will not be assumed that same liquor is involved in each count, 108 C 454
appeal because State informed against accused in three counts for one offense not considered where question not raised upon trial, 109 C 573
——especially as sentence was imposed on one count only, 109 C 573
information charging commission of two or more crimes in alternative is fatally defective, 111 C 209
——does not apprise accused of specific charge, 111 C 209
——defect not cured by verdict, 111 C 209
charge of libel in same writing against two or more may be joined in same information, 112 C 121
charge that the accused did "unlawfully manufacture, aid and abet in manufacture of" liquors not open to attack for duplicity, 113 C 767
——words "aid and abet" served merely to particularize charge, 113 C 767
where there are two separate charges in information, error as to one does not necessarily destroy judgment upon other, 119 C 455
——but where charges were so closely related that jury probably did not disassociate them, court did not apply rule, 119 C 455
defendant not prejudiced by denial of motion to quash count charging murder while committing robbery, since he was not found guilty under that count and evidence admitted under it was relevant to other counts, 120 C 624
joinder of counts for different offenses against same person, authorized by statute, not prejudicial, 126 C 62
——where two counts joined charging conspiracies with different persons, defendant cannot take advantage of it when he did not claim misjoinder at trial and substantial justice was done him, 126 C 62

§ 6. ——Statutory Crimes Generally

expression contra formam statuti required, only to show that action is brought on statute, 3 C 7
"contra formam statuti" for common-law offense is surplusage, 5 C 329
indictment must state all facts required to bring defendant within statute, 6 C 12, 10 C 369
indictment must negative exceptions in enacting clause, 6 C 12, 10 C 340, 369
——aliter, of exceptions and provisos in distinct clauses, 6 C 12
information lies on prohibitory clause of statute creating criminal act, when, 7 C 185
averment contra statutem is unnecessary when, 11 C 157
a statutory offense is generally well described in words of the statute, 14 C 491, 27 C 319, 38 C 402, 39 C 230, 47 C 46, 62 C 131
——aliter, of offense within the letter but not the spirit of the law, 27 C 320, 62 C 131
——and when offense is imperfectly described in statute, 38 C 402, 62 C 131
——it is for accused to show that the case requires greater precision, 14 C 491, 38 C 403
less strictness is required in charging statutory offense; ancient nicety and strictness much relaxed, 18 C 438
section of the statute need not be averred if the facts are sufficiently set out, 23 C 362
need not negative proviso after words of general prohibition, 24 C 527, 25 C 51, 30 C 39
——whether in enacting or subsequent section, 25 C 51
what defendant must show, to be within rule as to greater particularity, where offense is imperfectly described in statute, 38 C 403
particularity required in information, 39 C 230
indictment as at common law is good under our statutes, 50 C 580
must contain statement of all the facts and circumstances essential to constitute the crime with particularity and certainty, 62 C 130
——statute de wilful injury to public buildings, 62 C 128
charging statutory crime in the words of the statute, 66 C 9, 257, 72 C 606, 73 C 18, 80 C 321
——must negative exception when, 69 C 198
——effect of more particular description in limiting proof, 80 C 321
must charge all essential ingredients of crime, 72 C 606, 73 C 407
statutory offense can ordinarily be set out in language of the statute; if statute not clear, greater particularity required, 81 C 697, 83 C 304, 93 C 643
not sufficient to charge in language of the statute if general and including cases not within its spirit; demurrer lies, 82 C 321
words used to embrace offense described in statute instead of language of statute, 83 C 303

exceptions made in a statute need not be negatived in charge, 88 C 353
enough to charge violation of ordinance in its own language, 88 C 715, 91 C 67
sufficient to charge an offense in language of regulation creating it, 91 C 68
charge of statutory offense in words of statute ordinarily sufficient, 93 C 643
——greater particularity necessary when nature of offense in language of statute does not clearly apprise accused of charge, 93 C 643
verdict cures defective statement, but not absence of essential elements, 93 C 643
requisites of information as to certainty, 93 C 646
certainty requisite in information for criminal libel and the like, 96 C 616
no foundation for charge of vagueness in information which followed language of act in describing offense, 97 C 728, 99 C 115
information for violating order of municipal board of health must set out the order, 100 C 101
——for violating penal statute must set out the statute, 100 C 102
——or every fact necessary to bring case within statute, 100 C 102

§ 7. ——Particular Cases

information for indecent show, must contain what, 3 D 108
for battery with intent to suffocate and drown, charges intent to kill, 5 C 330
what description of bank notes is sufficient, 6 C 103
possession of several forged notes with intent to pass them is a single offense only, 7 C 416
——several informations for the several notes charge but one offense, 7 C 418
"with actual violence," supplied by equivalent words, 8 C 499
act of 1839; illegal liquor sale; what averments are sufficient, 14 C 491
——what degree of certainty is required, 18 C 437
complaint for selling "wine, liquor, or other intoxicating beverage," *held* fatal as being in the alternative, 19 C 500
complaint for "selling and offering to sell," is not double, 20 C 235
averment of sale "by defendant and by his agent," *held* good, 20 C 236
act of 1854; illegal sale of liquors; "contra pacem" not required, 24 C 521
——allegation as to quantity and kind of liquor sold, is not necessary, 24 C 526, 50 C 99
——allegation of sale "by himself or his agent," is surplusage, 24 C 288
——complaint against A and B; evidence of sale by A is admissible, 30 C 57
——construed severally as well as jointly, 30 C 57
for drunkenness, must aver defendant was "found" intoxicated, 25 C 9
arson; description of house, as separate building, where there are distinct tenements, is allowable, when, 29 C 346
attempt to steal involves guilty intent and overt act, 30 C 503
——both must be alleged, 30 C 503
——overt act is how set out, 30 C 504
——"by picking the pocket" insufficient, 30 C 504
——aliter, "by thrusting hand into the pocket," 30 C 505
intent to rape; term "actual violence" is not required; any words charging use of physical force are sufficient, 31 C 213
keeping house resorted to "for prostitution and lewdness," *held* not double, 38 C 38
——so also "keeping and maintaining," 38 C 38
act of 1870, de alleging degree of murder, is not retrospective, 38 C 399
——and inapplicable to pending indictment; though accused had not pleaded, 38 C 399
——charge of illegal voting; averment in words of statute is sufficient, 38 C 403
greater particularity necessary in charging false representations in the hiring of a horse, 39 C 230
——and in obtaining goods under false pretenses, 39 C 230
——representations and to whom made, to be set out, 39 C 230
information for obstructing "indifferent person lawfully deputed," *held* good after verdict, 39 C 251
murder in first degree may be charged in two ways: by common-law indictment alleging crime to be murder in first degree, or by charging wilful, deliberate, and premeditated killing, 47 C 117
count charging three as principals may be joined with one charging two as principals and third as accessory before the fact, 47 C 118
——if otherwise, cannot avail on motion in arrest; or on motion in error, 47 C 120
merely setting out forged instrument in a count for conspiracy to defraud, does not charge forgery, 48 C 548
——such count is not defective for incidentally charging offense of obtaining money by false pretenses, 48 C 549
charge that defendant "did sell and offer for sale and keep with intent to sell," etc., does not charge an illegal sale of liquors, 49 C 103
——but offense of owning and keeping with intent to sell and exchange, 49 C 103
——proof of actual sales tends to prove owning and keeping, 49 C 104

charge of keeping intoxicating liquors with intent to sell, etc., *held* not bad for uncertainty, 50 C 99
——for failing to state quantity and kind of liquors, 50 C 99
what form is sufficient under statute to charge murder in first degree, 50 C 196
——degree must be alleged, 50 C 197
——need not set out facts constituting murder in first degree as distinguished from second degree, 50 C 197
indictment for rape need not allege age of female; sufficient to allege "against her will," 50 C 579
"did sell and deliver spirituous liquors to wit, one half gallon of beer," 51 C 2
——not necessary to aver that beer was "intoxicating" under statute, 51 C 2
——the videlicet is restrictive of, not repugnant to, what precedes, 51 C 3
——but if repugnant it is surplusage, 51 C 3
charge of selling liquor without a license to a minor is good under statute, 51 C 4
——want of license does not make such sale legal, 51 C 4
cruelly overworking oxen may be alleged as a continuous offense between specified dates, under statute, 54 C 2
——neglecting to provide them with proper food, drink and protection, 54 C 2
electing a certain illegal sale of liquor under one count does not prevent proof of other sales under other counts, 54 C 92
——proof of actual sale admissible under charge of offering for sale, 54 C 93
where State has once fixed time of offense charged it cannot afterwards select another time, 57 C 527
——information for nonsupport under statute need not aver marriage; if charged in words of the statute it is sufficient, 57 C 537
information by state's attorney lies for assault with intent to murder under statute, 60 C 94
sufficient to charge the offense in words of an ordinance, 60 C 105
under statute de wilful injury to public buildings, *held* to be insufficient, 62 C 130
information for arson must state name of occupier of house, 63 C 331
——or there must be other averments showing the house to be a dwelling house of another than the accused, 63 C 331
——defect is fatal and not cured by verdict, 63 C 332
assault with intent to murder; "malice aforethought" qualifies malice, 63 C 391
——"aforethought" defined, 63 C 391
under statute, information may charge keeping disorderly house and also keeping house where lewd persons resort, 66 C 8
information may charge keeping place for registering bets and for selling pools, 66 C 250
information as to transmitting money for gambling purposes should charge knowledge of purposes, 66 C 250
——as to carrying on place for billiard playing on Sunday, 68 C 373
alleging illegal sale by agent as sale by principal; alleging acts by their legal effect, 69 C 86
information against receiver of stolen goods, 72 C 635
information against misappropriation of money as including checks, 73 C 95
where gist of offense is threatening and following one whereby he is intimidated, to charge intimidation by threatening and following is not sufficient, 80 C 614, 81 C 696
allegation that accused "unlawfully threatened and did by following, mocking and annoying use means to intimidate," good, 81 C 696
an indictment for keeping a house which was reputed to be a house of ill fame means the keeping of such a house in fact, 82 C 111, 83 C 55
information alleging that a woman and an unknown man at a certain time did carnally know and abuse a female is sufficient for both principal and accessory, 82 C 214
information should state particular acts done in disturbing a public meeting, 82 C 321
in theft, allegation of value is to apprise accused of degree of crime, 83 C 287
complaint alleging theft of chickens sufficient under the statute governing theft of poultry, 85 C 322
complaint for carrying on fat-rendering plant *held* sufficient under ordinance, 88 C 716
information for libel must allege malice and State must prove malice, 90 C 99
on information for assault with intent to murder, conviction may be had for assault with intent to kill, 90 C 381
information charging violation of "jitney" law *held* sufficient as following language of the act, 97 C 729
ordinarily sufficient to charge offense in words of statute, 99 C 117
——"unlawfully neglect or refuse to support wife," *held* sufficient, 99 C 117
——not demurrable for lack of averment that wife is or may become a public charge, 99 C 118
information for solicitation to commit crime made in assembly need not name persons solicited, 99 C 440
information for transporting "spirituous and intoxicating liquors to wit: alcohol" means alcohol of a kind such that transportation is illegal, 100 C 644

information charging accused with reckless driving or speeding *held* defective, 111 C 209

accused could not be convicted of operating motor vehicle without consent of owner upon information charging theft, 113 C 103

——crimes are separate and distinct, 113 C 103

charging conspiracy to cheat noteholders out of proceeds of mortgages securing them by diversion of funds *held* sufficient, 114 C 354

——means and object alleged unlawful; need not be criminal, 114 C 354

carnal knowledge of feeble-minded person, "who was at said time an imbecile," approved, 118 C 501

where information stated circumstances of offense with considerable particularity and informed accused of "nature and cause of accusation," *held* he was not entitled to bill of particulars, 119 C 70

charging defendant with offering payment to witness with intent to influence his testimony or conduct sufficient, 122 C 635

information charging conspiracy which stated circumstances with particularity and informed defendant of nature of charge so that he could prepare defense justifies court in denying motion for bill of particulars in exercise of discretion, 124 C 554

——not demurrable because it does not define offense in language of statute; conspiracy is common-law crime punishable under statute relating to high crimes and misdemeanors, 124 C 554

permitting amendment of information so that it would state that crime was committed in another town and allowing State to offer further evidence did not place defendant in double jeopardy, 124 C 663

form of indictment for common-law conspiracy approved, 126 C 82

——if defendant desired more specific statement he should have moved for it, 126 C 82

§ 8. Plea

different answers may be made to an uncertain, vague charge, 42 C 80

nolle prosequi no bar to new information, when, 42 C 233

accused cannot plead double to information, 49 C 435

——court should reject on objection all pleas except "not guilty," 49 C 436

——accused may prove all matters of defense under plea of "not guilty," 49 C 436

if grand juror's complaint is seasonable, under statute, accused cannot plead Statute of Limitations in Superior Court to a new information filed by state's attorney, 49 C 437

where record shows plea of guilty to complaint in two counts, plea applies to both, 70 C 73

plea of guilty before justice of the peace only proper where offense is in court's final jurisdiction, 77 C 136

plea of not guilty covers every crime which might be included in the indictment, 87 C 285

duty of court on offer to withdraw plea of guilty; consent to withdrawal, 90 C 81

plea of guilty admits whatever is well pleaded, 111 C 209

——but where information is stated in alternative plea cannot be regarded as admitting either offense, 111 C 209

plea of guilty to charge of "violating the rules of the road" not an admission of guilt of breach of any particular rule, 114 C 383

——hence not admissible in civil proceeding as admission, 114 C 383

plea of guilty to information charging generally breach of rules of the road, is not admission of breach of any particular one, 118 C 680

§ 9. Trial

See also Charge to Jury §§ 26, 38, 40

§ 10. ——In General

nolle prosequi; defendant entitled to acquittal if all the evidence is ruled out, 3 D 286

costs of capias for state's witnesses, taxable against accused, 19 C 488

single capias for three witnesses; each liable only for his own share of costs, 41 C 316

trial court may decline to stop a witness to enable prisoner's counsel to take notes of the testimony, 47 C 518

granting new trial, 65 C 274, 69 C 190

promise of immunity by prosecutor in return for confession, 71 C 309

rules governing proceeding for new trial; same as in civil action, 72 C 109, 74 C 638, 79 C 481

what rights may be waived by an accused, especially in a capital case, 72 C 117, 89 C 303

Practice Act not applicable to criminal prosecution; general demurrer is allowed; treating special as general demurrer, 72 C 606, 73 C 18

demurrer lies if statute defining crime is unconstitutional, 73 C 18

where judge presides twice over trial of same case, effect is not to oust jurisdiction; sentence is erroneous; error not waived by going to trial, 75 C 104

state's attorney should not ask questions simply to prejudice jury against defendant or witness, 81 C 22

failure to have testimony translated so that accused can understand it no error, 82 C 59

judgment not arrested for absence of accused in toilet during selection of the jury, 82 C
declaration of one of two indicted and tried together admissible to discredit himself and colleague, 82 C 59
immaterial if in proving crime charged, another crime appears, 82 C 213
insanity not in issue on preliminary hearing in City Court on charge of assault with intent to murder, 84 C 68, 80
"probable cause" and "probable ground" equivalent, 84 C 81
duties of attorney defending criminal, 84 C 88
counsel for one defendant cannot make admissions prejudicial to another, 84 C 152
discretionary with court to allow separate trial to persons jointly accused, 84 C 222
if accused convicted before justice for assault, not proper to ask justice if case turned on intoxication, 84 C 470
if accused had no understanding of what was done at the trial, sentence should be opened and plea of guilty withdrawn, 85 C 509
court can open criminal case after evidence closed, to let in new facts; after arguments begun, 90 C 126, 147
justice requires those jointly indicted to be tried together; that evidence admissible against one is not admissible against another, no grounds for separation, 92 C 58
if motion for separate trial is based on testimony to be offered, statement of it should be made, 92 C 63, 75
duty of court, where accused is without funds to defend, 95 C 451
duty of court to see that public defender appears where accused's funds are exhausted and his counsel withdraws, 95 C 451
——where accused desires to take transcript of evidence before Supreme Court and cannot pay for it, 95 C 451
court may at times authorize accused's own counsel to continue and may direct evidence to be printed at state's expense, 95 C 454
comment of state's attorney on use of depositions by accused *held* improper to extent of requiring new trial, 96 C 160
procedure where accused is charged under statute increasing penalty because of prior convictions, 96 C 161
as to trial by court without jury, 96 C 176
separate trials of persons jointly accused granted, when, 97 C 321
——procedure to determine, 97 C 321
——confession by one is usually good ground, 97 C 321
motive as an element in the trial of a case, 98 C 455
motion for separate trial of each accused; denial of motion *held* not error, 98 C 461
——duty of state's attorney de his intention as to offering confession of one, 98 C 462
an alibi, though called a defense, is merely rebuttal of state's evidence, 98 C 467
trial of accused is not a game to exhibit the prowess of counsel, 98 C 470
——but a judicial inquiry to determine guilt or innocence, 98 C 470
a conspiracy to commit a crime is not merged in the crime itself, 99 C 114
court may permit State to reopen case after accused has made motion for discharge for failure of proof, 103 C 145
matters concerned with the conduct of the trial are within the discretion of the trial court, 103 C 454
——such as segregation of witnesses, separate trials, order of testimony, 103 C 454
rising of officers near accused during introduction of high explosive, *held* not reversible error, 103 C 455
alibi as a defense, 103 C 469
after indictment, accused may be arrested on bench warrant and brought to speedy trial although previously bound over by Town Court to subsequent term of Superior Court, 106 C 701
mistrial only to be granted where it is apparent that because of some occurrence accused cannot have fair trial, 110 C 60
right of every accused, however depraved and vicious, to be tried for crime charged, and on issues presented by his plea and relevant evidence, 110 C 408
sequestration of witnesses rests in discretion of court, 123 C 666
province of trial court to control proceedings in court room; seating of witness, 123 C 675
denial of motion to reopen case after evidence and arguments closed, to introduce evidence on principal issue, within discretion of court, 125 C 399
rule denying motion for discharge on ground that no evidence sufficient to convict accused had been offered, not ground of error, 125 C 731
while accused should not be shackled while on trial without reasonable necessity, it is not violation of rights if there is ground to anticipate that he might do violence or try to escape, 126 C 41
having failed to acquiesce in State's motion for change of venue defendant could not claim unfair trial because of publicity, 127 C 544
trial judge not disqualified because he ordered grand jury and presided throughout its proceedings, 127 C 544

§ 11. ——Evidence

§ 11(1). In General; Burden and Sufficiency of Proof

marriage if alleged and essential must be proved as a fact; proof of cohabitation, reputation or confession, insufficient, 6 C 448

sufficient to prove so much of allegations as constitute a substantive crime, 19 C 392

court should not instruct that certain evidence is a prima facie case and shifts burden on defendant, 25 C 43

if place be important element of the crime it must be proved as laid, 39 C 43

accused cannot prove father's insanity by reputation, 47 C 539

burden of proving insanity rests on accused, 47 C 541

what is proof beyond a reasonable doubt, 57 C 540

——must exclude every reasonable hypothesis of innocence, 49 C 385

no distinction between direct and circumstantial evidence, 64 C 329

effect of presumption of innocence, 65 C 284, 84 C 229

presumption and burden of proof as to sanity of accused, 69 C 199, 77 C 287

rules of evidence in general the same as in civil actions; exceptions, 71 C 306

motive for crime may be, but need not be, shown, 74 C 529

burden of proof; general rule, 74 C 533, 75 C 326

accused is entitled to benefit of every doubt, 75 C 334

requirement of two witnesses in capital case complied with if there are two witnesses testifying to different parts of same transaction, 78 C 18

accused or his counsel may make admissions consistent with innocence; that murder has been committed by some one, 78 C 18

where State seeks to prove crime on certain day, it must abide by it; proof need not follow exact day named in indictment, 81 C 98

discretionary with trial court to have evidence read to jury, 82 C 60

to sustain information for keeping house reputed to be one of ill fame fact that it is such a house must be proved, 82 C 111, 83 C 56, 550, 96 C 315

Supreme Court cannot support judgment by presumption or intendments, 84 C 93

admitting testimony in favor of one but against another with instructions to apply it only to former, 84 C 222

to offer testimony at former trial in favor of one but hostile to another violates right to be confronted by witnesses, 84 C 222

presumption of innocence has no evidential force but casts on State burden of proving guilt, 84 C 223

in rape, reputation for chastity is a fact that can be weighed and considered by jury; protestations as to innocence on arrest, 84 C 223

jury can consider truthfulness of statements made after arrest and reasons for making them, 84 C 224

guilty knowledge can ordinarily be established only as an inference from proved facts; they must be such that a reasonable man of honest intention, in situation of accused, would have reached that conclusion, 84 C 411

in reaching conclusion of guilt, jury may consider circumstances surrounding accused at time of act and immediately thereafter, 84 C 411

proof of previous good character no defense, but may be considered on question of guilt and is of importance in closely balanced case, 84 C 472

ocular evidence of actual adultery or facts justifying a reasonable belief thereof warrants holding a killing manslaughter and not homicide, 87 C 5

accused who offers himself as witness cannot complain of cross-examination as to his reputation for veracity, 87 C 22, 88 C 150, 89 C 417

evidence, admitted with assurance it will be connected, should be withdrawn if it is not, 87 C 286

proof beyond a reasonable doubt defined, 87 C 573

new trial ordered if question asked insinuates that accused was under charges other than those before the court, 88 C 149

on question whether saloonkeeper allowed females to loiter on his premises, character of the place, surroundings, and customers admissible, 90 C 58

plea of guilty withdrawn for plea of not guilty may be given in evidence as a fact at variance with claim of innocence, 90 C 79

burden of proof as to malice and privilege in libel, 90 C 106

whether testimony in capital cases is equal to that of two witnesses is for jury to decide, 90 C 126

burden in nonsupport case; excuse or justification of husband, 91 C 11

evidence *held* insufficient to prove combination of parties to commit a crime or that accused aided or abetted it, 92 C 47

one joint criminal not convicted on unsupported evidence of another; if he testifies in his own behalf, his evidence is relevant to prove crime other has confessed, 92 C 59

perjury can be proved by one credible witness testifying directly to the falsity of the statement if corroborated by other facts, 93 C 4

statute is complied with, if one witness testifies to the killing and others to transactions tending to show guilt, 93 C 243
can prove that accused quarreled with W and assaulted C in belief that C was W, 95 C 140
——this does not violate rule forbidding another crime to be proved than that for which accused is on trial, 95 C 140
effect of presumption of innocence, 96 C 173
evidence of commission of one crime improper to prove commission of another, 96 C 173
provision of Constitution requiring that accused be confronted by witnesses against him considered, 96 C 306
——does not prevent use of transcript of testimony given at preliminary hearing, where accused was present and witness cross-examined, where witness has disappeared, 96 C 306
State may rely on presumption of sanity in first instance, 96 C 637
——after defense attacks sanity, State need put in no testimony but let it go to jury on the evidence of the defense, 96 C 637
——if in such case jury satisfied of sanity beyond a reasonable doubt, verdict of guilty is proper, 96 C 637
questions designed to get prior convictions of accused improperly before jury, reprehensible, 96 C 638, 97 C 266
——such purpose will not be readily inferred, 96 S 638
proof of being accessory before the fact supports charge of being principal, 98 C 460
at common law conviction of principal gave rise to presumption against accessory that crime had been committed, 99 C 103
——this is not true under our statutes, 99 C 103
effect of a presumption under a statute in favor of State; distinguished from prima facie evidence, 99 C 110
within court's discretion to permit State to cross-examine its own witness, 99 C 113
State should not ask prejudicial questions before jury to lay basis for appeal, 100 C 215
——ruling thereon, should be secured in absence of jury, 100 C 215
to put in evidence article found on person of accused is not to compel him to give evidence against himself, 101 C 225
improper for state's attorney to use evidence offered merely to explain letters put in by State to affect credibility of accused or show intent to do serious injury by inciting strikers, 102 C 711
statute forbidding evidence or arguments in civil case after cause has been committed to jury, has no application to criminal trial, 103 C 455
——timetable properly sent to jury after counsel agreed that it might, 103 C 455
purpose and scope of constitutional provision requiring that accused be confronted with witnesses against him, 103 C 511
——does not include public records required by law, 103 C 511
——analysis of liquors by state chemist, 103 C 511
rules creating exceptions to hearsay rules same in criminal and civil cases, 103 C 511
permitting state's attorney to ask series of questions not within proper cross-examination *held* not prejudicial, 105 C 115
accomplice testimony may support conviction though uncorroborated, if it establishes guilt beyond reasonable doubt, 105 C 326
proof of guilt beyond reasonable doubt; does not exclude a possible doubt, 105 C 757
identity of accused *held* established beyond reasonable doubt, 106 C 345
reasonable doubt defined, 106 C 355
State cannot attack character of accused until he puts it in issue, 106 C 454
proof of motive in criminal prosecution unnecessary; only evidential, 107 C 630
malice is necessary in arson, but may be express or implied, 107 C 630
burden to prove alibi is not on accused, 108 C 53
improper statement by witness tending to implicate accused voluntarily made and ordered stricken out *held* not ground for new trial, 108 C 57
no legal difference between direct and circumstantial evidence; each must exclude every reasonable hypothesis of innocence, 108 C 454
questions opened by cross-examination may be pursued on redirect, 108 C 454
effect of presumption of innocence; charge thereon *held* proper, 108 C 454
duty of State to prove guilt beyond a reasonable doubt, 109 C 124
——if any reasonable conclusion consistent with innocence can be drawn from evidence accused entitled to acquittal, 109 C 124
court could not find that ante mortem statement was made unless it sees or hears statement, 109 C 124
proof of motive not necessary where there is other evidence sufficient to establish guilt, 109 C 124
motive not necessary element of crime, 110 C 55
requiring accused charged with nonsupport to give testimony tending to prove that divorce was colorable, (dis.) 110 C 355
burden of proof is on accused in criminal libel to prove privilege by fair preponderance of evidence, 112 C 121

——and when effect of burden is fully explained not necessary to charge as to presumption in absence of request, 112 C 121
accused presumed to be innocent until proven guilty, 112 C 121
——but this has no weight as evidence, merely putting burden of proof on State, 112 C 121
exception in statute compelling wife to testify against husband where she has received personal violence applies only to violence received after marriage, 113 C 288
evidence of existence or nonexistence of motive as factor in trial for murder, 115 C 344
presumption of innocence of accused merely emphasizes burden of State; does not add additional burden, 118 C 60
presumption of sanity in criminal case is convenient device for avoiding proof of matter which in most cases does not present issue, 118 C 61
guilty knowledge on part of one receiving stolen goods can ordinarily be established only as an inference from other proved facts and circumstances, 119 C 29
——may be so inferred if circumstances are such that honest man should have come to that conclusion, 119 C 29
——jury may consider conduct of accused then and immediately preceding, 119 C 29
——*held* jury justified in drawing inference that accused knew that liquor they bought was stolen and aided and abetted crime and were accessories, 119 C 29
order of testimony in trial for perjury; production of evidence to show false testimony was material, 119 C 462
statutory requirement for conviction in capital case that there be testimony of at least two witnesses or its equivalent does not mean two or more witnesses testifying to same fact or to each fact, 122 C 529
——if there are two or more witnesses each testifying to different parts of same transaction of different circumstances, this is sufficient, 122 C 529
that evidence tends to prove commission of other crimes by accused does not render it admissible if otherwise relevant, 122 C 529
——as when confession included statement that before shooting accused broke into gas station, 122 C 529
——permissible for State in rebutting testimony of accused that he was intoxicated on night of crime to show that an hour before shooting he was seen acting like sober man, 122 C 530
——that he happened to be seen while robbing another building did not render evidence inadmissible, 122 C 530
question whether at some time or other witness had noticed something unusual about departure and return of car which was frequently driven by accused, not leading, 123 C 666
proper to allow witness to refresh recollection by reference to a conversation, 123 C 666
necessity of testimony of two witnesses or equivalent to convict of crime punishable with death, 123 C 673
possibility of distortion of photographs; cannot prevail over court's finding, 126 C 42
guilt of accused in capital case to be established by testimony of two witnesses or equivalent, 126 C 49
——all that statute requires is that proof of all essential elements of crime shall not depend on testimony of one witness, 126 C 49
——if one or more witnesses testify as to some essentials, and another to remaining essentials, statute is satisfied, 126 C 49
——whether testimony equivalent to that of two witnesses is question of fact, reviewable only if conclusion reached is not reasonable, 126 C 58
failure of accused to testify in own behalf may be considered by trier, 126 C 55
each element of offense must be proved beyond a reasonable doubt, 127 C 400
defendant entitled to benefit of presumption of innocence but effect of it limited to imposition of burden of proof of guilt beyond reasonable doubt upon State and it is not evidence, 127 C 543
though accused may not be compelled to incriminate himself on witness stand this does not protect him from unfavorable inference which may be drawn from exercise of privilege, 127 C 546, 568
——court's charge calling attention to failure of defendants to testify not in violation of constitutional rights or statute, 127 C 546
any conclusion reasonably to be drawn from evidence, consistent with innocence of accused, must prevail, 127 C 554
corroboration not necessary to proof of guilt in sex crimes, 128 C 124
in determining whether evidence establishes guilt beyond reasonable doubt, any conclusion reasonably drawn from it which is consistent with innocence must prevail, 128 C 298
inference from failure of party to testify; State must produce case where evidence, apart from inference, would be sufficient to go to jury, before latter is permitted to apply inference, 129 C 483
——if state has supported its burden of proof, then trier may throw inference from failure of accused to testify into scale to determine ultimate question of guilt or innocence, 129 C 483

evidence that defendant was intoxicated when found in middle of front seat of stationary automobile insufficient to support conviction of driving under influence, 129 C 483
——court could not use inference arising from failure of accused to testify to supply deficiencies in State's evidence, 129 C 484
discussion of requirement that State must prove guilt beyond reasonable doubt, that is, by such proof as precludes every reasonable hypothesis except that which it tends to support, 129 C 485
——law is settled that proof of guilt must exclude, not every possible, but every reasonable supposition of innocence of accused, 129 C 486
where State's evidence sufficient to cast upon defendants burden of explaining incriminating circumstances, court could properly draw inferences from failure to testify, 129 C 538

§ 11(2). Witnesses; Competency and Credibility

persons charged against whom no evidence exists are competent witnesses, 1 R 134
drunkenness of witness at time of facts sworn to, proved by acts and conduct, 2 D 201
——cannot be proved by quantity of liquor he drank, 2 D 201
testimony of accomplice how regarded by court, 54 C 190
statute allowing accused to testify carefully avoids all compulsion, 56 C 415
privilege of accused to refuse to testify; commenting in argument on such refusal, 73 C 99, 79 C 477
nature of evidence corroborating accomplice, 75 C 326
attacking credit of accused where he becomes witness, 76 C 94
immaterial contradiction of one by witnesses of other accused is of no significance, 84 C 222
where alibi is a defense, jury can consider accused's evidence in connection with all the rest, and if a reasonable doubt exists, acquit, 84 C 224, 231
testimony of self-confessed thief needs corroboration; not error to tell jury he testified after conviction without hope of escape, 84 C 411
asking physician if he had ever been arrested does not permit examination as to his expulsion from county medical society, 89 C 417
one of two accused can, in testifying in his own behalf, be a witness against the other, 92 C 58
necessity of corroborating an accomplice who testifies for prosecution, 97 C 462
where accused takes stand, cross-examination as to other crimes is admissible to affect credibility, 103 C 456
jury may accept testimony of confessed accomplice and admitted perjurer, 108 C 53
rule forbidding comment on failure of accused to testify does not forbid drawing inferences from it, 108 C 454
failure of accused to testify as to facts within his knowledge to be considered, 109 C 124
matter was attended with excitement and other matters liable to create differences in impression and recollections, 109 C 124
right of party to show facts to be different from testimony of own witness particularly applicable to State, 109 C 124
——in view of duty of prosecutor to produce every material witness, especially where court may accept most credible evidence, 109 C 124
statute that refusal of accused person to testify is not to be commented upon does not forbid inference being drawn from failure, 109 C 490
——constitutional provision that accused shall not be compelled to give evidence against himself explained, 109 C 490
——failure to deny crime on witness stand is relevant to issue of guilt or innocence, 109 C 490
——is to be given such weight as circumstances justify, 109 C 490
——State need not first prove guilt beyond a reasonable doubt, 109 C 490
where during trial State discovered effort of accused to bribe witnesses, court might permit it to be produced on rebuttal, 110 C 55
right to refuse to answer incriminating questions and limitations of right, 110 C 482
marriage by girl of nonage is voidable not void and she need not testify against husband, 113 C 288
testimony of accomplice need not necessarily be corroborated, 119 C 29
accused in criminal trial, by taking stand waives privileges and subjects himself to cross-examination upon acts or misconduct indicating lack of veracity, 121 C 669
——thus fact that accused had procured revolver used in crime by previous burglary and weapons found on him when arrested in a similar way was admissible, 121 C 669
——that such cross-examination might establish that accused had been found guilty of another crime, no reason to exclude it, 121 C 669
court need not inform complaining witness in rape case on motion of defendant of her right to refuse to give testimony which might degrade her, 122 C 605
that complainant in rape case drank liquor on other occasions would not in itself affect her credibility, 122 C 605
question whether she asked man for drink could only serve to affect credit if she de-

nied it and evidence was offered by defendant in contradiction of her statement, 122 C 605

——this would raise collateral issues and court properly refused to submit question for such purpose, 122 C 605

court can take into consideration fact that defendant does not testify in his defense or explain incriminating facts, 124 C 662

trier may convict accused upon uncorroborated testimony of accomplice, provided it believes crime proved beyond reasonable doubt, 126 C 48

——and where that evidence was corroborated by other evidence, a fortiori the court could convict, 126 C 49

——court could also accept part and reject part of testimony of accomplice, 126 C 49

cross-examination by state's attorney of defendant's witness as to his criminal record proper where on direct he testified that he had had some trouble with the law, 126 C 258

——especially in view of court's caution to jury, 126 C 258

permitting examination of testimony of two of state's witnesses before grand jury where they made contradictory statements at trial, except certain entirely irrelevant portions, was correct, 127 C 547

duty of State to offer every available witness whose testimony would aid court in arriving at truth and of trier to accept evidence it deems most credible, 128 C 40

whether policeman was testifying to conversations he heard over dictaphone from independent memory, or from memorization of memorandum he had made, was for jury, under adequate instructions, 128 C 172

witness having testified she was widow of murdered man, defendants could elicit fact that she was not legally married, 128 C 180

——but questions de imprisonment of legal husband properly excluded where not claimed for purpose of showing witness lived in adultery, 128 C 180

defendants entitled to show on cross-examination that witness violated Mann Act and harbored female for purposes of prostitution as these go beyond sexual offenses, 128 C 180

§ 11(3). Admissibility

disclosures by accused to state's attorney on application to turn state's evidence inadmissible, K 282

proof of counterfeiting inadmissible until the money is produced, 1 R 152

confession of counterfeiter admissible without production of coins if none can be found, 2 R 88, 93

counterfeiting; possession of engraved paper like unfinished bank note inadmissible to show guilty knowledge, 9 C 343

counterfeiting; what evidence inadmissible to show guilty knowledge, 19 C 237

false pretenses; accused cannot show his pecuniary standing to rebut motive; nor as evidence of his fair and honest dealing, 27 C 592

keeping bawdy house; character before nolle admissible in subsequent prosecution, 31 C 576

bearing of drunkenness on criminal acts requiring malice, 40 C 142, 41 C 585

unauthenticated document, purporting to be copy of foreign marriage record, inadmissible against accused, 40 C 147

false statements de transaction after it occurred, inadmissible to show fraudulent intent, 43 C 478

——false representations made after delivery of goods, inadmissible, 43 C 479

false pretenses; evidence of bad character of accused for veracity, inadmissible, 43 C 479

letters of accused to his wife are not privileged, when, 47 C 540

——conversations overheard by third persons, 47 C 540

mental condition of accused; State may prove his accurate memory, 47 C 541

general threat to burn "that barn" of plaintiff admissible to show malice, 49 C 337

fact of marriage how proved; testimony of wife and marriage certificate admissible, 57 C 537

——cohabitation as man and wife raises presumption of marriage, 57 C 538

——confession of defendant is admissible to prove marriage, 57 C 538

criminal prosecution under § 2358, Rev. 1888; evidence by defendant to show that place was a natural oyster bed is inadmissible except by a description within § 2328, 62 C 49

any act or statement of one accused of crime showing influence of crime is admissible, 64 C 305

documents obtained by trespass admissible, 67 C 290

proving good character of accused, 71 C 227

in prosecution for assault with intent to kill, accused may testify as to intent, 71 C 231

endearing expressions of wife of accused toward victim of murder, uttered after crime, not admissible to support claim of adultery of victim and that of wife, 74 C 177

evidence as to finding shells corresponding to bullet in murdered man, in room of accused, admissible without preliminary proof, 74 C 649

where assault and breach of peace are charged, evidence of participation of others in fray is admissible, 75 C 201
evidence of threat by accused to commit assault is admissible, 75 C 204
same evidence admissible in different trials for distinct offenses, 77 C 203
on trial for criminal abuse of female child, later acts of intercourse admissible, 81 C 1
in action for abuse of girl under sixteen previous unchastity and consent immaterial, 82 C 454
admitting evidence that a house is reputed to be of ill fame does not invalidate a trial; not unconstitutional, 83 C 55
malice necessary to establish murder; accused's state of mind before and at time of act, if it throws light on his mental attitude, admissible, 83 C 261
to rebut claim that accomplice had instigated the prosecution because of accused's refusal to go on accomplice's bond, State may show that prior to such refusal accomplice had confessed and implicated accused, 83 C 287
insanity, how shown, 84 C 87
good reputation considered only with other testimony in the case, 84 C 222
where the accused claimed that a third party was one of the assailants, State can show he was not present at the assault, 84 C 224
in assault to commit rape, complainant's belief that defendant frequented improper houses or that saloons kept open after hours, immaterial, 84 C 224
in rape, complainant's habits as to intoxicants and defendant's knowledge thereof, immaterial, 84 C 224
evidence of ill will as motive, 84 C 470
shirt worn by victim admitted to show size and location of cut, although it had been washed, 84 C 470
evidence of defendant's feeling towards one assaulted six months before assault, may be admitted, 84 C 471
conversation showing motive to kill sixteen days prior to the homicide not too remote, 87 C 5
statement of one of two persons accused is hearsay unless uttered in other's hearing, then admissible only to show latter's attitude inconsistent with innocence, 88 C 164
whether a statement was freely and fairly obtained is a question of fact, 88 C 165
mutual relation of accused and decedent in homicide case is proper inquiry on question of motive, 88 C 178
custom of murdered man to carry money in his pocket, admitted, 90 C 126
statement of accused inconsistent with his plea of innocence, admissible, 92 C 59
papers showing unfriendly or hostile relations towards murdered one, admissible, 92 C 59
evidence of other unconnected murders not admissible, 92 C 526
evidence of other murders admissible to exclude innocent intent of accused in administering poison and to eliminate accident and mistake in doing so, 92 C 526
good character evidence must be relevant to trait in issue, 93 C 3
State may prove that police lieutenant gave instructions to his officers and that they acted accordingly, but may not show specific instructions, 96 C 161
——after witness has stated that he applied certain tests to accused, not proper for him to describe application of same tests to two of state's witnesses to afford jury a basis of comparison, 96 C 239
——where alienists have testimony on certain tables showing results of tests, they may be admitted as exhibits, 96 C 240
——extent of cross-examination by use of treatises, 96 C 240
——on cross-examination, question of witness for State as to whether accused had knowledge and understanding of ordinary men is proper, 96 C 240
medical expert testimony is indispensable but should be kept within reasonable limits, 96 C 240
——comparison of accused's mentality with that of child not a valuable criterion, 96 C 240
——witness cannot state opinion whether accused should be held fully accountable for his acts, as that is question for jury, 96 C 240
under charge of keeping house of ill fame, evidence of reputation of place, and that it was resorted to, is proper, 96 C 306
prior convictions in another State ordinarily to be proved by record, 96 C 638
——whether oral testimony would be admissible, quaere, 96 C 638
——but testimony of police lieutenant that pursuant to his orders officers searched the automobile and brought certain articles, hearsay, 97 C 259
where several were charged with joint possession of instruments of housebreaking, revolvers found upon all and contents of automobile in which they were riding were admissible against one tried alone, 97 C 259
statements made to accused admissible, when, 97 C 259
plea of guilty by one jointly accused may not be used against another though conspiracy is charged, 99 C 103
——admitting plea harmless where accused later admitted that crime had been committed, 99 C 104
where accused was charged with making speech inciting strikers to acts of violence

various matters of evidence, charge and argument considered, 102 C 708
——if State proves any part of alleged speech which solicited to crime this is enough, 102 C 711
where accused has agreed to definition of "scab" printed on card it should not be marked as exhibit as this gives answer too much weight, 102 C 709
——so issuance of injunction against strikers may be shown but improper to put in injunction file as recitals were hearsay, 102 C 709
——other speeches of accused not too remote are admissible to show his intent, 102 C 711
on charge of transporting liquor analysis may be introduced in evidence though liquor has been destroyed, 103 C 138
that accused previously transported beer and paid drivers, admissible to show guilty knowledge, 103 C 138
evidence, otherwise admissible, not objectionable because it tends to prove commission of other crimes, 103 C 455
——is admissible when so connected with principal crimes that it tends to prove its commission, 103 C 455
evidence of other crimes are not admissible to prove bad character of accused, 103 C 455
——but may be to corroborate accessory and to identify accused, 103 C 456
effect of withdrawal of exhibit marked for identification on failure to connect it with accused and of judge's caution as to it, 103 C 456
in arson case, proofs of loss *held* admissible, though made after the fire, 105 C 115
identification of accused by witness prior to trial and all surrounding circumstances, are admissible, 105 C 326
weapons found in automobile of accused and at scene of assault, admissible to establish identity and intent, 106 C 345
self-defense; when reputation of deceased for violence is admissible; specific acts can never be shown, 106 C 454
evidence of reputation for violence not admissible to establish which was aggressor in fight, 106 C 454
utility and admissibility of fingerprint evidence, 106 C 701
flight of accused and misstatements as to incriminating facts as admissions, 106 C 702
statements in presence of accused to which he makes no reply admissible when, 107 C 148
——statement of victim of abortion read in presence of accused charged with it, 107 C 148
——that police officer added caption nil sig. where it added nothing to statement, 107 C 148
——dying statement admissible, though ordinarily made when victim not in fear of death, if read over to her when she is and she assents, 107 C 148
——finding of court conclusive, 107 C 148
——is admissible in prosecution for manslaughter by abortion, 107 C 148
how far mother of deceased victim of abortion may testify as to what her daughter told her of visits to doctor's office and her belief as to her pregnancy, 108 C 53
staves of vats with name of accused stenciled thereon admissible to prove his ownership, 108 C 454
record of conviction of crime not admissible in civil action to prove truth of act charged, 108 C 572
evidence as to accused's connection with another fire admissible where plan was to take goods from that building and place them in building burning of which was charged in present case, 109 C 394
conduct of automobile driver in running away after striking pedestrian is relevant as admission of guilt, 109 C 497
rogues' gallery photographs with number and record covered, admissible for identification purposes, 110 C 55
——record on back of, not admissible to prove person a burglar, 110 C 55
that accused is burglar, not relevant where State claims he set fire, 110 C 55
record of complaint and fine not signed by clerk or judge inadmissible to prove criminal record, 110 C 55
articles found in possession of accused subsequent to crime admissible only to establish fact in issue or to corroborate other direct evidence, 110 C 403
——basis same as that denying admissibility of evidence of unrelated crimes, 110 C 407
statements made to officer induced by promise of favor in respect to prosecution inadmissible, 110 C 549
no prescribed set of circumstances establishes fraudulent intent, 112 C 40
——question is for jury and wide latitude allowed in evidence, 112 C 40
admissible forms of dying declarations explained, 113 C 209
statement of little girl about indecent assault committed against her the day before, admissible to corroborate her testimony as to it, 115 C 672
general rule is that corpus delicti, the fact that specific crime charged has been committed by someone, cannot be established by extrajudicial confession of accused unsupported by corroborated evidence, 116 C 691

——weight of authority recognizes that such a confession may be considered in connection with other evidence to establish corpus delicti, 116 C 691
——and that it is not necessary to prove it by evidence entirely independent of confession, 116 C 691
——independent evidence must be material and substantial, 116 C 691
——this evidence should be introduced and court satisfied of its substantial character and sufficiency to render confession admissible before latter is allowed in evidence, 116 C 691
conception of our court of nature and effect of extrajudicial confession, regarding it not as equivalent of direct testimony but as some evidence, circumstantial in nature, of truth of fact contained in it; not incompatible with above rule, 116 C 691
corroborative evidence of indecent assault *held* abundant, independent of confession of accused, to warrant subsequent admission of confession in evidence, 116 C 691
court erred in excluding evidence which would be corroborative of accused's claim that the use in the writ of the bond on which he had signed the name of surety was due to mistake and confusion of papers, 119 C 455
file of action in the trial of which perjury was alleged admissible to prove action pending in court and to show issues, 119 C 462
——if there was improper matter in it, objection should have been addressed to limiting its use, 119 C 462
——not necessary in all cases that a judicial record should be complete to make it admissible, 119 C 462
defendant's plea of guilty before justice of peace court to charge of lascivious carriage properly admitted as tending to show inclination toward adultery, 120 C 161
evidence in support of alibi is to be considered, together with all other evidence, upon question of reasonable doubt, 120 C 498
though defendant makes no dispute as to manner of killing, incumbent on State to show circumstances, and sweater through which bullet passed admissible, 120 C 498
articles offered in evidence will not be excluded because they have been seized in violation of provision in our Constitution forbidding unreasonable search and seizure, 120 C 573
——and provisions in Bill of Rights attached to United States Constitution have operation only on powers delegated to federal government, 120 C 573
——rule as applicable to motion made at beginning of trial for return of articles and to motion to strike them out as evidence as it is to an objection to them when offered, 120 C 573
evidence of commission by accused of other crimes violates rule which forbids State to initially attack character and also that bad character may not be proved by particular acts, 120 C 624
——but this does not render it inadmissible if relevant for other purposes, 120 C 624
when police officer has been killed by one whom he was attempting to arrest while escaping after commission of another crime, evidence of commission of that crime is relevant upon the prosecution of homicide, 120 C 624
——is necessary to present complete picture; also to show justification of officer for pursuing him, 120 C 632
evidence that when arrested in course of flight, accused possessed weapons and money in no way connected with the crime, might be excluded in discretion of court, 121 C 669
fact that accused makes confession while imprisoned and was not told of constitutional right and officer stated to him that he had better tell the truth, not grounds for exclusion, 121 C 669
——nor is fact that officer made untrue statement which had no tendency to produce a confession which was not true, 121 C 669
——nor is fact that defendant may have made confession to take blame from others, because motive of confession of no importance unless resulting from threats, fear or promise, 121 C 669
while ruling on admission of confession is within court's discretion, its action reviewable upon basis of grounds of exclusion, 121 C 681
where statements made by the accused were voluntary, nil sig. that he was then under arrest; or that he was not warned that he need not answer questions put to him, 122 C 603
question of whether intoxication exists not matter of opinion but of general knowledge; questions of lay witness as to whether and to what extent accused was intoxicated proper, 124 C 664
question asked of doctor who had examined accused as to whether condition would affect operation of motor vehicle proper, 124 C 664
——and of policeman who had driven automobile for eighteen years as to whether accused was fit to drive, 124 C 664
prior conviction of "driving under influence of drugs or liquor," though in alternative, admissible for purpose of proving accused, convicted of driving under influence of liquor, a second offender, 124 C 664

statements of deceased as to his then present intention to go to meet defendants made on day preceding his murder admissible, 125 C 321

——but not statements concerning intentions and actions of defendants, tending to show conspiracy to murder, 125 C 321

where it subsequently developed that memorandum from which witness read conversation of defendants heard over dictaphone was copy and that original was not admissible as past recollection recorded, court should have stricken out entire testimony, 125 C 321

evidence of motive of third party to commit crime not admissible until there is some evidence which connects him with the crime, 125 C 322

restrictions on evidence admissible before grand jury, 126 C 60 and see GRAND JURY

order of proof in conspiracy case was in court's discretion, 127 C 546

——as well as admission of evidence on condition that it be connected up subsequently, 127 C 546

act of 1931 de admissibility of business entries established a general rule in criminal as well as civil cases, 127 C 547

——ledger items, bank deposits, etc., admissible in conspiracy case, 127 C 547

whether to admit voluminous records as a whole, though they included many irrelevant items, a matter of discretion, 127 C 547

——that defendants not present when records were made or were not parties to them nil sig.; entries were evidence of transactions they set forth, 127 C 547

§ 12. ——Election of Trial to Court

application to withdraw election to be tried by the court addressed to sound discretion of trial judge; properly refused where unreasonable under all the circumstances, 102 C 46

in determining as to permitting the withdrawal of election of trial to court, considerations affecting presentation of state's case and public interest proper, 102 C 46

——withdrawal after jury excused for term properly refused, 102 C 46

——law is constitutional, 102 C 49

statute permitting it approved by experience; every right of appeal preserved to accused, 105 C 326

determination of challenge to array will not be reviewed where thereafter accused elects to be tried to court, 105 C 326

in case tried to court, conclusion of three judges in homicide case, that shooting done with malice and intent to kill upheld, 109 C 124

——judges subject to same limitations as a jury would be, 109 C 124

——guilt must be proved beyond a reasonable doubt, 109 C 124

——judges may consider failure of accused to testify and his resting on denial of guilt to police, 109 C 124

in trial to court motion to set aside verdict not necessary, as assignment of error suffices, 109 C 124

——where claim that subordinate facts do not support conclusion raises same question as assignment that evidence does not support verdict, no occasion to correct finding, 109 C 124

on trial of homicide to three judges, no motion to set aside judgment as against evidence necessary but assignment of error is sufficient, 110 C 549

——any question which might be raised on trial before jury can be raised on appeal, 110 C 549

——with addition of finding of facts by judges, 110 C 549

right to challenge legal sufficiency of entire evidence may be raised by a simple assignment of error, 114 C 456

——principle of proof beyond reasonable doubt is to be applied, 114 C 458

——where judgment is attacked upon this ground, claims for changes in finding usually unnecessary, 114 C 459

in prosecution before court assignment of error that on evidence accused not proven guilty, makes unnecessary consideration of motion to correct finding, 115 C 306

§ 13. ——Argument and Conduct of Attorneys

standard medical works on insanity may be read to jury by counsel for accused, de his insanity, 46 C 330

——the practice has by repetition become a rule in this State, 46 C 330

——counsel may also read insanity cases from regular law reports, including the facts and comments thereon, 46 C 330; but see 59 C 243

limitation of time for argument in capital case must be reasonable, 47 C 535

under statute two hours are allowed each party for argument in Superior, Common Pleas and District Courts, 55 C 17

——the time may be divided among counsel as they see fit, 55 C 17

——refusal of court to allow full time in murder case *held* error, 55 C 17

commenting in argument on refusal of accused to testify, 73 C 99, 79 C 477

wide latitude given to argument, 74 C 638

right of counsel to comment on gravity of offense charged and to read statute imposing penalty, 75 C 55

extraneous illustrations must not be used in argument to bring in inadmissible facts, 75 C 215
not necessarily improper for counsel during or after argument to state to jury that use of magnifying glass will disclose something in photograph supporting his claim as to a matter in dispute, 78 C 677
error in argument cured by charge; failure to object in trial court; what constitutes improper argument, 81 C 22
reprehensible for counsel to go outside the record in addressing the jury, 83 C 161
——new trial not ordinarily granted for it, especially if no objection is made below, 83 C 161, 183
state's attorney's remark that accused evidently could not pay over the money is of no significance, 83 C 449
——that there might be no rebuttal, as accused might not take the stand, not improper, 83 C 449
right of counsel to call court's attention to mistake in charge, or erroneous assumption of facts, 87 C 291, 93 C 328
attorney who wilfully disregards the rulings and suggestions of the court, rules of court and the proprieties of the occasion should be admonished or summarily suspended or disbarred, 88 C 149
court can criticize counsel for not following up cross-examination in which he accuses witness of dishonesty, 92 C 599
state's attorney's argument *held* not improper, 92 C 658
duty of state's attorney in arguing case, 96 C 160, 97 C 269
——proper course of opposing counsel and court where improper argument is used, 96 C 161
——state's attorney may not comment on failure of out-of-state witnesses, who give deposition, to appear in person, 96 C 160
improper argument by state's attorney may be ground for reversal, 96 C 164
use of standard scientific treatises, 96 C 240
statutory requirement that failure of accused to testify shall not be commented upon considered, 96 C 289
——disobedience not necessarily ground for new trial, 96 C 289
——proper procedure in case of disobedience, 96 C 289
——charge, 96 C 289
——statement that certain contention as to matter in knowledge of accused was not denied not violation of statute, 96 C 289
reprehensible to ask question for purpose of getting before jury, in an improper way, a former conviction, 96 C 638
argument of state's attorney *held* objectionable and prejudicial, 97 C 260
right of court to interrupt with statement of principles of law he shall charge as applicable to case, 97 C 462
grossly unfair and improper remarks of assistant prosecutor, a ground for new trial, 99 C 121
——duty of court to at once rebuke counsel and remove prejudicial influence, 99 C 121
argument of state's attorney improper and unfair in using certain evidence of Mooney bomb outrage to imply that accused, prosecuted for soliciting strikers to violence, intended similar outrage on day of Yale-Harvard football game, 102 C 711
argument of state's attorney *held* within limits of fair advocacy, 103 C 455
remarks of state's attorney in trial to court seldom furnish ground of appeal; in jury trial must be flagrantly improper, 105 C 326
ordinarily a timely objection should be made to argument deemed improper, 105 C 338
remarks of state's attorney *held* cured by charge, 106 C 260
argument of state's attorney *held* unobjectionable, 106 C 345
reply of state's attorney to statement in argument by attorney for accused that he was remiss in not bringing another to trial for cause *held* justified, 109 C 394
——duty to object to improper argument immediately or at its close, 109 C 394
reflections upon motives of state's attorney in prosecution of accused on trial or appeal discountenanced, 109 C 394
remark of state's attorney not ground for new trial in absence of objection at time, 110 C 55
remark by state's attorney that he had not promised leniency to and would deal later with confederate of accused who was state witness not ground of mistrial, 110 C 55
where state's case dependent almost entirely on testimony of S, and defendant sought to discredit S by showing he had promised immunity for his testimony, statement of state's attorney that no promise of exemption had been made *held* reversible error, 120 C 486
——especially as no admonition to disregard statement was given by court, 120 C 486
——and prestige and confidence pertaining to office, and personal reputation for probity of state's attorney, gave finality to statement making it the more prejudicial, 120 C 486
——that it was made impulsively and upon strong provocation, nil sig., 120 C 486
refusal to grant request for more than one hour for argument *held* not abuse of discretion, 122 C 611
no abuse of discretion in refusing request of defendant's counsel to grant him more than

hour fixed by statute for argument, 122 C 611

denial of mistrial because of argument of state's attorney not abuse of discretion where defendant failed to object and court subsequently cautioned jury to disregard, 124 C 556

——trial judge has means of discerning wiser course and has large discretion, 124 C 556

finding as to improper argument cannot be reviewed where court stenographer did not take argument and no proceedings taken to rectify appeal, 124 C 567

error in admitting statements of deceased re intentions and actions of defendants aggravated by argument of assistant state's attorney, 125 C 321

in manner in which court deals with claims of improper argument, it exercises large discretion, 126 C 62

state's attorney's argument that fact that wife of defendant failed to testify that he was elsewhere on night of crime was strong reason to believe his story to that effect untrue, justified, 126 C 257

state's attorney justified in arguing that to disregard testimony of state's witnesses would be to imply belief that State gave them inducement for false testimony, in response to defendant's argument that they were influenced by desire to avoid consequences of their own acts, 126 C 257

where impropriety of state's attorney's argument lay in fact that there was no testimony to support it rather than that it was predicated on inadmissible evidence, no reversible error, 128 C 179

§ 14. ——Jury

court may discharge jury against prisoner's consent, when, 2 D 504

Superior Court cannot try criminal case even by agreement without jury, 27 C 281

jury's opinion of sufficiency of evidence is of no consequence, 37 C 360

——provided they are fully satisfied as to guilt of accused, 37 C 360

jury how far judges of the law, 40 C 247, 47 C 551, 69 C 127

whether building in question could be a subject of burglary, to be submitted to jury under directions from court, 42 C 263

offer of accused to proceed with eleven jurors; acceptance *held* sufficient, 46 C 549

——quaere, as to verdict of eleven jurors in capital case, 46 C 549

sheriff may procure attendance of persons in court from whom talesmen may be taken, 47 C 135

——either of his own motion or by order of court, 47 C 135

accused has no right to have jury polled, 47 C 533

——doubtful if such was an absolute right at common law, 47 C 533

jury as much bound by the law as the judge, 47 C 551

entire paper may go to jury in prosecution for publishing obscene literature, 73 C 19

papers proper to go to jury; error cured by verdict, 75 C 201

jury's accidentally taking out the request to charge among the papers is immaterial; judge's instruction on discovery, 82 C 59

discretionary with court to read stenographer's notes or give transcript to jury, 82 C 60

belief of accused that decedent intended to kill him is for the jury, 83 C 261

calling for designation by jury of count on which one found guilty, 83 C 298

law and facts submitted to the jury; judge should state his opinion of the law, 83 C 597

jury, not court, decides whether crime is murder or manslaughter, 87 C 285

accused can have question of murder or manslaughter submitted to jury even if counsel says only claim is that of murder, 87 C 286

jury passes on conflicting evidence and credibility of witnesses, 87 C 585

for jury to decide if one entered store to kill, 90 C 126

opinion of guilt from reading the newspapers as disqualifying juror, 97 C 322

returning jury twice for further consideration, *held* not only proper but wise, 98 C 462

that sheriff had personal difficulty with one of accused not ground of challenge to array where he never had come in contact with jurors, 100 C 207

——challenge to array is one to whole panel and ground must affect validity of their selection and summoning, 100 C 207

jury panel must be reasonably distributed among the several towns; but an apparently unreasonable distribution may be shown to be proper under all the circumstances, 103 C 453

discretion of trial court in drawing of jurors, 103 C 453

irregularity in drawing jurors not reversible error, unless accused is prejudiced, 103 C 453

reasonable distribution of jurors among the several towns; trial court's discretion in deciding challenge to array; right of appeal waived by subsequent election of court trial, 105 C 326

function of jury in criminal case, 105 C 757

jury may wholly reject testimony of discredited witness or give it such weight as they think proper, 105 C 757

continuation of trial, and holding jury, pending illness of juror, *held* proper exercise of discretion, 106 C 701

no need to draw jury before term if there is to be no business for it, or if drawn, summons may be deferred till jury needed, 106 C 702
——error in summoning additional jurors instead of those originally drawn disregarded unless prejudice appears, 106 C 701
jury need not find every fact established which State claims to have proven, 123 C 679
mere fact that some of circumstances proven were capable of explanation consonant with innocence of accused would not require jury entirely to disregard them, 123 C 679

§ 15. ——Verdict

in discretion of court to put prosecutor to election of counts, and to direct jury to find separately on each count, 34 C 298
presumption from general verdict of guilty on several counts, 34 C 299
if jury is "satisfied of guilt of accused," the court may charge them to convict, 37 C 360
——though they may think the evidence not strong enough, 37 C 360
as to directing verdict, 65 C 287, 69 C 133
if accused is found guilty on complaint in two counts by general verdict, conviction stands if either count is good, 66 C 255
kinds of verdict; contents and form; "guilty of crime of attempt at rape" is sufficient; proper under indictment for rape, 70 C 104
general verdict is sufficient, where three counts charge same offense, differing only as to means used, 74 C 525
jury may accept defense's theory though no affirmative evidence supports it, 75 C 326
scope of facts concluded by verdict; distinction between civil and criminal proceedings, 77 C 203
motion for new trial for verdict against evidence in capital case, 81 C 22
aider by verdict applies in criminal cases, 81 C 696, 93 C 643
upon information charging theft of property with stated sum, general verdict of guilt is a finding that the allegations of value and other allegations true, no request for special finding having been made, 83 C 287
effect of general verdict in theft and generally, 83 C 298
effect of general verdict where crime is charged in two counts, 83 C 298
court can accept a verdict, after each juror has responded that it was his verdict, even if it is not for a crime as charged, 90 C 381
verdict cures defective statement of essential fact but not its entire omission, 93 C 643
verdict of not guilty on ground of insanity, 96 C 243
court cannot direct verdict, 96 C 637
when verdict may be set aside as against evidence, 97 C 462
verdict on conflicting evidence not set aside even in murder case, 98 C 454, 103 C 468
possible hypothesis of innocence not enough to set verdict aside where jury might properly find against any reasonable hypothesis, 99 C 103
accused entitled to benefit of a reasonable, but not a possible, hypothesis of innocence, 99 C 105
when verdict directed for accused, state's appeal raises question whether evidence warranted any other verdict, 100 C 637
power of judge to direct verdict for accused should be sparingly and carefully used, 100 C 638
when verdict may be set aside as against the evidence, 101 C 503
where court twice enumerated possible verdicts and then recalled jury to add another, *held* not to constitute attempt to direct verdict, 105 C 757
rules governing action of trial court and Supreme Court on motion to set aside verdict in criminal case, 106 C 701
conclusion that shooting done with malice aforethought and intent to kill inescapable where accused killed without extenuation and with own pistol, 109 C 124
setting aside verdict; question is not whether court would come to same conclusion, but whether jury acting fairly and reasonably could reach verdict, 110 C 406
verdict will not cure defect in information which is fatally defective, 111 C 209
——as where it alleges offenses in the alternative, 111 C 209
duty of court to return jury for further consideration of verdict which is ambiguous, 113 C 247
——verdict is no verdict until accepted, 113 C 247
——statute as to returning of jury for further consideration applies in criminal cases, 113 C 247
if jury could reasonably have reached conclusion that cumulative effect of facts found proven established guilt beyond reasonable doubt, verdict must stand though evidence wholly circumstantial, 123 C 680
test for setting aside verdict in criminal case, 127 C 553
where more than one accused are on trial, jury should answer guilty or not guilty as to each defendant, 127 C 593

§ 16. Punishment; Sentence; Suspension; Probation

§ 17. ——In General

sentence must be supported by, and follow, the complaint, K 215
at common law sentence may be for confinement in state's prison for a limited term, 2 R 62, 3 C 116

sentence may be reversed for uncertainty, 2 R 282
life imprisonment cannot be inflicted at common law, 3 C 116
sentence to town workhouse must be for a definite time, 3 C 502
cumulative penalties for successive convictions; information need not allege it to be first offense, 9 C 563
payment of costs regarded as part of punishment, 16 C 50
court has no control over disposition of fines where statute specifies recipient, 18 C 432
justice's judgment that fine be paid treasurer of town, construed, 39 C 562
sentence of death, pending motion for new trial, *held* no error, 46 C 339
failure to inquire whether prisoner had anything to say, etc., if error, affects only the sentence, 47 C 545
——prisoner may be resentenced, 47 C 545
——common-law reasons for this practice do not exist in this State, 47 C 544
sentence to pay a fine on each count, *held* no error, 50 C 100
"convicted" means when accused has pleaded guilty or has been found guilty by jury; though there has been no sentence or judgment, 53 C 487
sentence for assault with intent to murder, must be for a definite number of years, 60 C 95
life sentence is one distinct from a term of years; though latter may cover lifetime of accused, 60 C 95
——statute illustrating difference between punishment for life and for a term, 60 C 95
sentence for life in no case is allowable unless the statute so prescribes in terms, 60 C 95
power to punish by fine or imprisonment justifies either, 75 C 351
Legislature and courts have wide discretion in fixing fines, 83 C 2
if accused does not understand distinction between two crimes, his sentence should be reopened, 85 C 509
penalty within maximum limit entirely discretionary with trial court, 101 C 8
one becomes second offender upon violation of same or any other provision of enforcement act, 101 C 8
separate counts though charging sales of liquor on same day require separate sentences, 101 C 8
within limits fixed by statute, severity of penalty is entirely a matter for the trial court, 103 C 138
imposition of sentence is the judgment of the court, 109 C 239
nature and purpose of judgment file, 109 C 239
——is not judgment, which is rendered when decision is announced, as by imposition of sentence, 109 C 239
——nature and effect of clerk's notations on back of file of case when sentence is pronounced, 109 C 239
——another clerk may draw file based on them even while action in which it is offered in evidence is on trial, 109 C 239
——that file treats date sentence was suspended as date of judgment, not date of its imposition nil sig., 109 C 241
under statute de accessories, accused could be convicted of arson as principal though not owner or tenant of building burned, 109 C 394
infamous crimes are those punishable by state prison sentence or involving moral turpitude and punishment by imprisonment for six months or more, 112 C 270
imposition of sentence is the judgment of the court, 112 C 601
fifteen to twenty-five years' sentence for rape of young girl not excessive or unconstitutional, 113 C 786
no child under sixteen may be sent to jail, 115 C 596
deferring sentence after conviction for a few days, during which defendant became sixteen years of age, then sentencing to Connecticut Reformatory, improper, 115 C 596
sentence in excess of power of court not void in toto where legal part is severable from illegal; habeas corpus will not lie until prisoner has served legal part, 115 C 600
justice of peace imposed fine in excess of his power and sentence of thirty days in jail; *held* habeas corpus does not lie until prisoner has served term in jail legally imposed, 115 C 600
statute authorizing directors of reformatory to transfer inmates persistently refusing to obey regulations or incorrigible to state prison *held* valid, 116 C 136
——the possibility of such transfer is incident to sentence to reformatory, 116 C 136
——the regulations referred to in statute include those governing conduct while on parole, 116 C 136
——method of transfer where prisoner is in state prison under sentence for crime committed while on parole, 116 C 136
——vote of directors that sentence is to take effect after expiration of prison sentence, construed and upheld, 116 C 136
——maximum term of sentence and provision of reformatory law that time when inmate is on parole is not to be counted in determining time he has served, continue effective after transfer, 116 C 136
——but inmate becomes entitled to commutation for good behavior under present law, 116 C 143

——how such commutation is figured, 116 C 143
sentence may be modified at any time during term of court at which it was imposed, if no act done in execution of it, 119 C 70
——appeal taken same day not considered to have been filed before modification, 119 C 70
——and so whether power of court to modify is terminated when appeal is taken, not considered, 119 C 70
defendant sentenced to be hanged but before execution statutes were passed providing that execution should be by electrocution; *held*
——that §§ 6561 and 6568 (Rev. 1930) in effect attach to every act repealing a statute a saving clause as regards matter covered by repealed statute, 121 C 195
——that the acts providing a new method of execution constitute a "repeal" of the previous law, and the situation comes within the purview of §§ 6561 and 6568, 121 C 195
——and the judgment directing the hanging is effective, 121 C 195
——history of relevant statutes reviewed, 121 C 195
excessive fine, under Constitution, is pecuniary punishment imposed by lawful tribunal upon person convicted of crime or misdemeanor, 121 C 459
——disability to recover rent for failure to comply with Tenement House Act is not, 121 C 454
power of Governor to grant reprieves, 124 C 121
prior conviction of "driving under influence of drugs or liquor," though in alternative, admissible for purpose of proving accused, convicted of driving under influence of liquor, a second offender, 124 C 664
where terms of imprisonment are within limits specified in statute, Supreme Court cannot hold that trial court abused its very large discretion, 125 C 211
elements in fixing length of sentence so many and intangible that even marked differentiation between defendants could rarely be held error as matter of law, 125 C 211
where punishment fixed for conspiracy was increased by amendment, amendment did not apply as regards conspiracy last overt act of which took place before amendment, 126 C 62
where indictment contained two counts charging different conspiracies, against one of which Statute of Limitations had run, sentence as upon one count, where there was no means of determining to which count it applied, erroneous, 126 C 62
——error did not affect verdict and case remanded for new judgment thereon, 126 C 62
this State has no constitutional direction that Legislature shall prescribe both minimum and maximum fines; lacking such a provision such a prescription is not mandatory, 126 C 413
benefit of provision against excessive bail or fines extends to fines fixed by Legislature, also to those imposed by court, 126 C 427
statute imposing heavier penalty for a crime where it is still being carried on does not violate constitutional provision prohibiting State from passing ex post facto law, 127 C 547
——where information charged continuing conspiracy from 1930 to 1938 sentence imposed under statute passed in 1937 which increased penalty correct, 127 C 547
sentence in statute de perjury and subornation of perjury, imprisonment "in jail not more than six months or in State Prison not more than five years," applicable to either offense, 127 C 719
Supreme Court has no discretionary jurisdiction de penalty which is within the limits fixed by statute, 128 C 323
wide field open to trial judge in obtaining information, after conviction, relevant to mitigation or aggravation of seriousness of the offense, 128 C 324

§ 18. ——Suspension and Probation

probation law construed and upheld; time of suspended sentence does not reduce it, 88 C 500
courts can be given a year to retain control over their judgments; whether they could be given pardoning power, quaere, 88 C 501
power of court to suspend sentence and admit to bail after conviction, 100 C 297
——to admit to bail prisoner held on extradition pending appeal from dismissal of writ of habeas corpus, 100 C 297
undisclosed intention to suspend sentence disregarded as oral pronouncement and judgment file are conclusive of judicial determination, 102 C 22
——suspension cannot be made in another town after court had adjourned without notice and hearing, 102 C 22
——issuance of mittimus being ministerial matter may be compelled by mandamus, 102 C 22
——even though judge is over seventy, 102 C 23
necessity of notice and hearing before suspension of sentence, 102 C 27
——and pronouncement in court or entry of record, 102 C 33
statutes de suspension and probation not applicable to justices of the peace, 102 C 22
act of 1929 de suspension of sentences; to be construed as single piece of legislation; history reviewed; intent to except drunken

drivers twice convicted from suspension of sentence and probation law, 111 C 281
attempt to suspend sentence by justice of peace is nullity, 115 C 600
——judgment not affected by it and mittimus might properly issue eleven days thereafter, 115 C 600

§ 19. ——Indeterminate Sentence; Sentences as Concurrent or Consecutive

where sentence is for successive terms of imprisonment, the second begins when, 5 D 178
if provision for minimum punishment eliminated in all statutes but one, it means something in that, 84 C 470
a minimum limit of not less than one year does not forbid a minimum of ten or more years, 84 C 470
nature and effect of statute enhancing penalty where there have been two prior convictions, 94 C 698
——distinct statute from that for "incorrigibles," 94 C 698
maximum of thirty years under act where twice before convicted; necessary allegations in information, 96 C 172
portion of Indeterminate Sentence Act relating to third offenders does not create new crime but relates solely to penalty, 110 C 298
——words "state prison or penitentiary" not intended to include federal penitentiary in Atlanta, 110 C 298
Indeterminate Sentence Act; proviso concerning third offenders does not limit minimum term to maximum fixed by statute for original offense; creates no new crime but relates solely to penalty, 110 C 403
in view of the Indeterminate Sentence Act, no person can be sentenced to state prison unless term exceeds one year, 115 C 600
if sentences upon two or more counts are to run concurrently each must fix a minimum and maximum term, 126 C 218
——where this is done for one count and only one period under other counts, necessary implication is that terms are to run consecutively, 126 C 218
sentence fixing maximum and minimum on first count, for a period of not less than two years on second count, and same on third count, *held* intended to run consecutively, 126 C 219
——and under Indeterminate Sentence Act court should have designated definite period or designated a maximum on second and third counts; sentence invalid for uncertainty and plaintiff should be released after expiration of maximum sentence on first count, 126 C 219
no separate sentence to state prison can be made for a fixed period but must be indeterminate, 126 C 220
where sentence imposed for two or more separate offenses and maximum and minimum fixed on first and only maximum on other, terms of imprisonment regarded as one continuous term in determining time earned or forfeited, 129 C 164
——so where M sentenced, on five counts, two to four years on first, not more than two on others, in determining days forfeited for violation of parole and days earned, periods of imprisonment regarded as one continuous term, 129 C 164
——like result reached by federal courts under similar terms of act of Congress, 129 C 168

§ 20. Appeal

a void recognizance on appeal from justice does not render appeal void, 48 C 59
——appearance of accused can be compelled by appropriate process, 48 C 59
right of State to appeal not limited to errors during trial alone but extends to errors in earlier part of proceedings, 58 C 98
appeal to Supreme Court on ground of errors in trial and conviction of appellant in criminal prosecution not a criminal proceeding, 61 C 497
statute as to appeal by State upheld; bail, 65 C 265
policy as to appeals by accused, 69 C 190
sentence must be given before appeal is taken; power to suspend sentence when it is taken; bail, 71 C 457
accused cannot complain of ruling that several counts state but one offense, 75 C 267
accused is entitled to every doubt in considering materiality of error, 75 C 334
on appeal from justice court, original file and mittimus treated as record, 77 C 136
in capital case, if appeal decided before time set for execution Supreme Court need not set day, 81 C 22
appeal acts as stay of execution of sentence, 82 C 60
defendant successful on appeal not entitled to costs, 82 C 392
the appeal, not the proceedings preparatory thereto, puts in operation stay of execution, 84 C 566
issuance of mittimus prior to appeal, discretionary with court, 84 C 567
on the facts refusal to issue third stay of execution no error, 84 C 567
proper action on appeal from void judgment, 86 C 198
appeal from justice vacates judgment and case stands as though brought to upper court, 90 C 588
no distinction between appeals in civil and criminal cases, 95 C 451
appellant must procure and pay for a transcript of the evidence, 95 C 451

——unless court orders it printed on motion of his attorney or public defender, 95 C 451
on appeal from demurrer sustained, finding improper and court will not consider it, 100 C 101
that guilt of accused not proved beyond reasonable doubt can only be raised on appeal by assignment based on that claim of law in trial court, 102 C 658
function of Supreme Court upon appeal from first degree murder verdict, 103 C 453, 106 C 701
election of court trial; method of raising claim that evidence does not establish guilt beyond reasonable doubt, 105 C 326
finding of subordinate facts and conclusions in court trial reviewable as in civil cases, 105 C 326
printing evidence and taxation of costs upon appeal from trial to court, 105 C 326
in criminal case tried to court, where only reason of appeal is based on sufficiency of evidence, appeal must be taken within ten days of judgment; if other reasons assigned, appeal to be taken in regular course, 105 C 326
when State appeals, permission of presiding judge must be obtained at time of judgment; practice outlined, 106 C 114
when State appeals, accused must be admitted to bail, 106 C 114
appeal from motion to quash requires finding of facts, 106 C 701
methods of obtaining review in criminal case tried to court, 109 C 29
in case tried to court finding of subordinate facts is material only if it is claimed they do not support court's conclusions, 109 C 29
pursuit of claimed corrections of finding unnecessary where general assignment raises question pertaining to guilt beyond reasonable doubt, 109 C 124
in criminal cases tried to court, motion to set aside verdict should be dispensed with, 109 C 124
——same purpose attained by simple assignment of error when appeal taken, 109 C 124
in testing charge, Supreme Court assumes jury might have found facts claimed by accused, 110 C 309
function of three judges acting as court in criminal case, 110 C 549
——what the appeal brings up, 110 C 549
proper procedure in appeal from court of judges; motion to set aside verdict should be dispensed with, 110 C 549
appeal from justice of peace vacates his judgment and case stands in appellate court as though originally brought there, 112 C 599
proper remedy to attack judgment of guilty by appeal, not habeas corpus, 113 C 339
sufficiency of evidence in jury trial tested by motion to set aside verdict and appeal from its denial, 114 C 459
——in court case, by simply assigning it as reason of appeal, 114 C 456
assignment of error predicated on court's conclusion that accused was guilty raises question to be considered on all the evidence; consideration of correction of finding unnecessary, 115 C 306
motion in arrest of judgment on ground of errors in charge or rulings or insufficiency of evidence to support conviction improper; appeal from judgment or motion to set aside verdict correct procedure, 115 C 672
record of commitment by justice was not filled in in part reciting that . . . was minor and . . . appointed guardian ad litem; on writ of error *held* that in view of failure to fill spaces and that plaintiff in error jointly tried with four others record cannot be read as containing finding that she was minor, 116 C 723
——and therefore failure to appoint guardian ad litem not error, 116 C 723
right of State to take appeal or bring writ of error in criminal case, 118 C 373
——in absence of constitutional or statutory provisions is denied in most American jurisdictions, 118 C 373
——but must be treated as question of first impression here, 118 C 373
——reasons usually advanced: right denied by English common law, procedure never invoked in particular jurisdiction, double jeopardy; reasons dismissed in present case, 118 C 373
——right to appeal here restricted to cases in Superior Court and Courts of Common Pleas, and then only when court grants permission, 118 C 373
——and so where statute under which accused was prosecuted is held unconstitutional in City Court, writ of error is only means for review, 118 C 373
——nor does it subject accused to double jeopardy, since entire proceedings constitute but one putting of accused in jeopardy, 118 C 373
——limited character of questions open on writ of error—claimed errors apparent on face of record—meet danger of remedy being improperly invoked, 118 C 373
——and provision that writ be served and returned "as other civil process" did not effect any essential change in scope of writs of error, 118 C 384
——writ of error from judgment of City Court holding statute under which accused was prosecuted unconstitutional *held* properly brought, 118 C 373
appeal taken same day not considered to have been filed before modification of sentence;

whether power of court to modify is terminated when appeal is taken, not considered, 119 C 70

denial of motion to dismiss information, and to direct verdict not assignable as error, 119 C 437

appeal from denial of motion to set aside verdict raises only question of sufficiency of evidence, 119 C 436

——does not raise question of sufficiency of pleadings, in instant case of information, 119 C 436

where two counts charged forgery, error as to third count charging perjury committed at later time would not necessarily invalidate judgment on first two, 119 C 455

——but since charges were so closely related rule not applied except in event there was clearly no error as to first two counts, 119 C 455

to determine claim that on evidence court could not reasonably have reached conclusion that defendant was guilty of murder in first degree, Supreme Court must look beyond finding to the evidence, 120 C 219

——but finding serves purpose of showing conclusions court reached from conflicting evidence, 120 C 219

in determining whether evidence established guilt beyond reasonable doubt, Supreme Court will not consider detailed corrections in finding, since it bases its determination on evidence, 120 C 624

statute which permits State to appeal in criminal case with permission of trial court does not subject accused to double jeopardy, abridge his privileges and immunities as citizen or deprive him of life or liberty without due process of law under Fourteenth Amendment, 122 C 529

practice of statutory court in murder case to make finding of subordinate facts upon which it based its conclusion, 123 C 667

on appeal from judgment in trial of accused to court under general assignment of error that accused not proven guilty, question is whether on all evidence he is guilty beyond a reasonable doubt, 126 C 53

misjoinder of offenses in criminal case not of avail on appeal in absence of showing of prejudice or that substantial justice was not done, 126 C 60

where the necessary judgment from finding and conclusions of trial court was that defendant be acquitted, proper judgment of Supreme Court was that such judgment be rendered rather than new trial be had, 127 C 402

where it is assigned as error that court found on all evidence that defendant was guilty, finding serves no purpose but to show conclusions by court as to matters where there might be reasonable difference of opinion, 128 C 42

assignment that court erred in finding defendant guilty of crime upon all the evidence makes it unnecessary to consider detailed changes requested in finding, 128 C 154

criminal judgment is not vacated by appeal, 128 C 323

no appeal lies to Supreme Court from judgment of City Court in criminal case, 128 C 341

appeal on ground of uncertainty in information not sustainable unless it appeared that defendants were prejudiced in defense on merits, 128 C 407

§ 21. Miscellaneous Crimes and Misdemeanors

See also titles for each specific crime.

prosecution for counterfeiting, when barred by Statute of Limitations, K 21

what public shows are punishable at common law, 3 D 108

what constitutes lascivious carriage, 5 D 84

——presence of third person is not required, 5 D 85

nuisance is not high crime and misdemeanor, 6 C 418

——nor escape of prisoner under arrest for breach of peace, 6 C 475

——nor erection of wall in highway, 7 C 430

miller liable criminally for taking unlawful toll, 7 C 185

justice of peace may convict of profane swearing, on view, 8 C 379

distinct offenses of profane swearing, on same day, in relation to same person, 8 C 380

imprecation of future divine vengeance constitutes profane swearing, 8 C 380

statute de peddlers construed and applied, 10 C 460

what constitutes false pretenses and when indictment lies at common law, 12 C 108

statute against false pretenses examined and construed, 12 C 110

a mere naked assertion may constitute false pretenses within meaning of statute, 27 C 590

statute de obstructing an officer applies to indifferent person deputed, 39 C 251

——process admissible, though never returned, 39 C 251

whether obtaining land by false pretenses is within statute de false pretenses, quaere, 43 C 475

violation of city ordinance de leaving vehicles near crosswalk, *held* a misdemeanor, 57 C 288

——for which criminal prosecution would lie, 57 C 289

——penalty not a compensation to city, 57 C 289

——sufficient if proved by a preponderance of the evidence, 57 C 541
offense of entering inclosed land, does not require a guilty intent, 60 C 226
sodomy consisting of immoral act on body of boy twelve years old; *held* boy could not consent, 61 C 50
——if he submitted without resistance *held* the act was still by force, 61 C 50
legislation as to sports and gaming on Sunday reviewed, 68 C 375
wilful injury to public building; necessity and proof of malice, 71 C 741
statute as to publishing obscene literature; motive not an element of crime, 73 C 31
refusal to turn over property to attaching officer who has lost possession of it after attachment *held* not obstructing or resisting, 74 C 64
cheating as civil and criminal wrong, 75 C 210
meaning of "wilfully" in statute; statute may make act criminal without regard to intent, 76 C 92
intimidation; what constitutes threat, 77 C 228
statutory requirements as to oil; point of inflammability, 79 C 463
all participants in crime liable as principals; supplying ticker for pool room, 80 C 317
statute requiring gold articles to be truthfully marked does not apply to sales made in another State, 80 C 509, 81 C 111
statute de intimidation of persons construed, intent, 81 C 696
purloining of exhibit while judge is absent is criminal contempt of court, 82 C 262
gist of offense created by ordinance of assembling and refusing to disperse is refusal to disperse; must have reasonable time to comply with order, 84 C 164
statute regarding sale of food in packages without printing the net weight, construed, 88 C 353
salesman of fat-rendering plant cannot be fined for its operation; manager can be; meaning of "operate," 88 C 716
sale of article containing wood alcohol requires delivery with intent to transfer title, by owner or his agent, not mere transfer of possession, 96 C 102
——knowledge of presence of wood alcohol not necessary to constitute crime, 96 C 102
as to the certainty necessary in the definition of a crime, 96 C 605
——statute penalizing "disloyal, scurrilous or abusive" matter about government, or matter intended to bring it into contempt, or which creates opposition to organized government upheld, 96 C 605
solicitation to commit a crime as a common-law offense; essentials, 99 C 433
lascivious carriage not an infamous crime, 104 C 121
what constitutes deadly weapons; sawed off billiard cues, 106 C 352
one may be guilty of crime of cheating and defrauding without use of false token or device addressed to public at large, 114 C 362
ordinance against keeping firecrackers for sale invalid because not approved at borough meeting or published in newspaper as required by charter, 118 C 199
statute making it a crime to carnally know female under age of forty-five, who is epileptic, imbecile, feeble-minded or a pauper, is intended to protect public against danger of increasing defectives in population, 118 C 501
——hence same test as to whether female is within statute is not to be applied as though it were intended for her protection, 118 C 501
"lascivious" signifies conduct which is wanton, lewd and lustful and tending to produce voluptuous or lewd emotions, 120 C 161
violation of statute prohibiting bathing in tributary to reservoir, 123 C 492
soliciting money for religious cause; statute does not apply to dissemination of literature, 126 C 1 and see Constitutional Law
one distinction between embezzlement and obtaining money under false pretenses is that in former defendant does not have title to property while in latter he has, 128 C 153
court refused to read into statute forbidding use of sale of contraceptives exception as regards physicians who believed pregnancy might cause death of mother, 129 C 84

CURTESY

See Husband and Wife; Andrews and Fowler, Maltbie and Townshend Digests

CUSTOM

See Evidence § 50; Usage and Custom

CY PRES

See Charities § 5

DAIRY AND FOOD COMMISSIONER

See Milk

DAMAGES

§ 1. In General
2. Right to and Liability for
3. Measure of Damages for Breach of Contract
4. ——General Rules
5. ——Sales of Real Estate
6. ——Sales of Personal Property
7. ——Leases
8. ——Miscellaneous
9. Measure of Damages in Tort
10. ——In General; Miscellaneous Cases
11. ——Personal Injuries and Death
12. ——Injuries to Property
13. ——Trover and Conversion
14. ——Fraud; Undue Influence
15. Exemplary or Punitive Damages
16. Mitigation; Enhancement
17. Nominal and Substantial Damages
18. Liquidated Damages; Penalties
19. Averments as to Damages; Special Damages
20. Evidence
21. ——In General
22. ——Personal Injuries and Death
23. ——Value
24. ——Miscellaneous Cases

See also Automobile § 36; Charge to Jury § 31; Contribution and Reimbursement; Forfeitures and Penalties; Interest; Joint and Several Liability; Judgments § 16; Libel and Slander § 4; Questions of Law and Fact § 10; Sales; Trespass § 9; Trover and Conversion § 4; Verdict § 18; Workmen's Compensation §§ 18, 24, 25

§ 1. In General

not enhanced by general verdict, when all counts are for same cause, 17 C 259

must be immediate consequence of act complained of, 26 C 530

——judgment against A for costs on unauthorized suit in his name by B; A's damage *held* not the legal consequence of B's act, 26 C 529

discussion as to what is consequential damage, 28 C 212

——levy on goods; illegal alteration of assessment list, 28 C 213

assessment of, after default, by jury in United States courts, is a matter of practice not of right, 43 C 600

hearing in, not allowed where committee has already found damages, 45 C 149

case remanded after award on motion in error, but not on any point affecting damages; defendants *held* not entitled to a new hearing, 50 C 220

smallness of, not a ground for refusal of new trial where judgment is erroneous, 53 C 50

——but question whether damages properly included interest to date of judgment, *held* too small to justify new trial, 53 C 214

where cause of action is continuous, for what time damages recoverable on complaint and on counterclaim, 64 C 556

conjectural and speculative damages not allowable, 68 C 221, 85 C 359, 88 C 624

——as possible future beneficial use of water diverted, 71 C 451

——nor are damages merely anticipated, 73 C 179

mental suffering as element of damages, 68 C 392, 71 C 377

effect of withdrawal or waiver of claim for damages, 69 C 440
parties are entitled to know what rule of, is applied, 70 C 125
where damages are small, slight excess will not justify new trial, 72 C 561
assessment on alternative finding is erroneous, 72 C 624
impossibility of certainly determining amount of, no reason for refusing, 73 C 622
——nor is difficulty in separating results of different injuries, 72 C 362
effect of agreement to accept judgment for certain amount against one of two defendants, 78 C 35
the amount due on a prior agreement merged in a new agreement has a bearing on the question of damages in a suit on the new agreement, 81 C 343
Legislature can fix an arbitrary sum for damages if not unreasonable, 82 C 1
whether comity will enforce a rule of damages different from ours, quaere, 83 C 278
tort-feasor is held to stricter liability in respect to damages than one who breaks contract, 83 C 417
damages up to time when disability may reasonably be considered to cease are a bar although harmful consequences follow, 84 C 117
definition of general and special damages, 84 C 119
not necessary to enter exact amount in dollars and cents for each item, 84 C 203
damages for trespass and injunction may be asked for in same suit, 85 C 159
future apprehended consequences which are speculative, no basis for damages; those reasonably certain to follow are, 85 C 438
damages allowed when fair preponderance of evidence shows future pain and suffering likely to follow, 85 C 438
in tort, all damages must be recovered in one action, 85 C 441
where damages are slight according to the evidence, defendant entitled to an adequate charge on question of damages; action on a covenant, 86 C 9
prospective as well as accrued profits allowed if they can be reasonably expected, 86 C 453
in determining damages, plaintiff not compelled to take a course which subjects him to litigation, 87 C 84
award of damages arising after suit brought under statute, 87 C 169
limits for allowing expenses and counsel fees in an award, 87 C 678
must not exceed satisfaction for injury; part satisfaction limits recovery to balance, 89 C 95
damages accrue when contract broken; subsequent offer to pay, immaterial, 90 C 2
fact that future damages are difficult to assess does not prevent recovery on indemnity bond, 91 C 197
future damages recoverable where action brought on continuing contract, 91 C 197
all damages past and future to be recovered in one action, 91 C 197
allowance of a lump sum in an award is good, 91 C 685
future damages reasonably certain are recoverable, 92 C 237
precision and certainty not requisite; garbage disposal contract, 93 C 286
claim for damages, although unliquidated, provable in bankruptcy court, 94 C 240
in personal injury cases, damages and liability inextricably interwoven, 94 C 503
when prospective profits are recoverable, 94 C 661
election to claim damages bars one from claiming any interest in or lien on land, 95 C 66
it is customary and proper for a committee to allow alternative damages, 95 C 537
unless damages appear to be more than compensatory, judgment will not be modified, 95 C 693
payments by a third party to plaintiff, on whatever ground made, not regarded in determining amount he is entitled to, 97 C 283
market value implies the existence of a market for that kind of property, 99 C 334
must be within contemplation of parties, 102 C 152, 104 C 430
decreased value of dollar as affecting amount, 102 C 453
general principle of recovery in all tort actions, 103 C 759
compensatory damages are those naturally resulting, 105 C 177
cardinal rule is fair and just compensation for injury and loss; all other rules subordinate, 106 C 423
fundamental principle is fair compensation, 108 C 549
——uncertainty or difficulty in estimating no reason to deny if reasonable basis exists, 108 C 549
——reasonable probability that loss followed from injury must be shown, 108 C 551
responsibility of defendant limited to results accruing as proximate result of act, 109 C 87, 110 C 184
purpose is to compensate plaintiff, not to punish defendant, 111 C 575
unliquidated damages largely with discretion of trial court, 111 C 667
in tort, not excessive unless unreasonable exercise of judgment and discretion of the court, 111 C 723

wrongdoer not permitted to benefit by payments made by others not joint tort-feasors, no matter what the motive was, 115 C 568
——this is true of payments to an employee under the Workmen's Compensation Act on account of injuries, or payments made to a member of the national guard by the State for injuries received while in service, 115 C 568
damages awarded on count based on indorsement of note and on count based on fraud in its sale, with provision that payment on either count would reduce amount due on other, 116 C 418
mere difficulty in assessment not sufficient reason for refusing damages where right to them has been established, 118 C 367
violation of legal right imports damage, 119 C 496
when award is made by court there is not same need as in jury case to scrutinize it to see if it was result of emotion rather than judgment, 123 C 308
——and error cannot be found except upon basis that conclusion was not reasonable, 123 C 310
assessment of *held* to have been made in exact accordance with rule laid down by Supreme Court in former appeal, 125 C 216
where single award of damages made to both plaintiffs, defendant by request for special finding could have caused court to record amount it found each plaintiff entitled to, 125 C 737
question whether agreement between attorney and client was accord and satisfaction of former's claim for legal fees, or an executory accord, one of intention, 126 154
——if the former, the new contract became substituted for contingent fee contract, extinguished it and damages could be based on former, 126 C 154
——if latter, damages might be based on old contingent fee contract, 126 C 155
——as no finding on this vital point, case was remanded, 126 C 155
law furnishes no precise rule for assessment of general damages; must depend largely on judgment of trier, 126 C 360
practical test in estimating damages assessed by a judge, 128 C 474

§ 2. Right to and Liability for

person injured by forgery may have damages therefor, 1 D 100
——though not the person whose name is forged, 1 D 100
consequential injury from works calculated to improve the Connecticut River is damnum absque injuria; where erected in a prudent and skillful manner, 9 C 442
——though by a company chartered for that purpose, 9 C 442
implied from violation of another's right, 17 C 303, 22 C 84
works constructed under authority of the State to improve navigable river; where ordinary care is used, there is no relief for consequential injury to land within the State, 52 C 574
——but State has no authority to subject land out of its jurisdiction to injury, 52 C 575
——injunction granted against raising Enfield dam to injury of land in Massachusetts, 52 C 576
town not liable for injury resulting from deepening and widening river for health purposes, under authority of Legislature, where work is done without negligence, 55 C 510
recovered by wife for alienation of husband's affection belong to her, 58 C 10
no liability where damages were avoidable, 67 C 481, 75 C 483, 78 C 12
failure of consideration as affecting damages in contract action, 71 C 171
no damages at law for act done after suit begun, 72 C 202
act done in pursuance of lawful act of Legislature which provides for no damages not basis for, 72 C 285
threatened injury not basis for award of, 73 C 179, 76 C 79
damages for series of injuries from runaway due to defect in highway, 75 C 288
invasion of right without injury as entitling one to damages, 75 C 341, 79 C 458
judgment that bond has been broken establishes right to some amount of damages, 81 C 720
no right of apportionment or contribution between joint tort-feasors, 83 C 27
damages implied where there is an invasion of a substantial right even though breach proves beneficial, 84 C 556
mere breach of contract may not come within rule that implies damages unless a legal right has been invaded, 84 C 559
Sales Act makes it possible to recover damages for nonacceptance of goods when title has not passed, 85 C 141
discharged employee can sue for stipulated salary without proving that he tried to get other employment; can sue at once or wait until expiration of time, 85 C 422
landlord who breaks his covenant liable for nominal damages though tenant is negligent, 86 C 8
no damages for property taken by police power unless sanctioned by statute or Constitution, 86 C 561
interference with flow of water of lower proprietor not damnum absque injuria, 86 C 597
one discharged as nonunion man entitled to damages unless there is legal justification based on legal agreement, 86 C 641

father waives damages for loss of minor's services if minor sues in own name, 88 C 265
plaintiff cannot recover hospital bill paid by defendant, 89 C 15
if two join in assault, damages cannot be assessed against one, 89 C 238
joint purchaser, if misled by associate, can recover excess paid to other partner, 90 C 183
even if specific performance is not granted, damages can be recovered, 90 C 281
acceleration or aggravation of pre-existing injury or ailment as a proper basis, 90 C 544
if action within Statute of Frauds no damages unless there is a writing, 92 C 416
no damages for an unenforceable contract, 92 C 563
contractor's right to recover for substantial performance and for extras, 93 C 380
——cannot recover on quantum meruit but can use common counts, 93 C 381
if one misrepresents title, damages allowed although purchaser could have found truth on land records, 94 C 219
if plan of a highway is defective, town liable for its continued operation and maintenance, 94 C 533
violation of legal right imports damage, 96 C 221, 455
where plaintiffs, to whom defendants gave bond not to engage in competing business, assigned business to corporation, they could not recover on bond, 97 C 299
immaterial from what source money to pay expenses was derived, 98 C 87
recoverable by architect dsmissed by owner's fraud and concealment, 98 C 186
that policeman continues to receive regular pay after injury does not prevent recovery for lost earning power, 98 C 603
jury not to find the present worth of the amount of damages to child, 100 C 55
——plaintiff entitled at once to full amount of damages allowed, 100 C 55
——rights to be exercised during minority by a guardian, 100 C 55
plaintiff entitled to damages for goods wrongfully detained by defendant but not replevied, 100 C 96
as to liability of city to sewer contractor compelled to pay damages, by the way the city has required work to be done, 100 C 159
defendant in replevin not entitled to damages unless he counterclaims, 101 C 60
——and then only such damages as arise from act of replevy, 101 C 60
seller entitled to recover broker's fees upon buyer's repudiation, 101 C 504
——where contract obligated seller to pay them though title never passed, 101 C 504
trespasser is liable not only for direct proximate results, but for indirect and consequential, 102 C 93
——burning of cottage unlawfully occupied, by use of oil water heater, 102 C 93
owner may recover damage to interior of building by rain, due to faulty construction of roof, 102 C 152
——he may also recover expense of repairs, 102 C 152
right to recover for medical and nursing services rendered gratuitously or paid for by third party; this right is personal and exclusive, 105 C 88
father *held* not entitled to recover for services of daughter in care of his injured wife, 105 C 88
where defendant's negligence alone caused collision, but damage was due to plaintiff's unreasonable speed, *held* that plaintiff was liable for full amount of damages, 110 C 184
there may be a recovery for damages due to shock and fright, if there has been even a slight physical injury, 111 C 58
——as where woman fainted and fell to floor causing some physical injury, on seeing automobile back into window of store where she was, 111 C 58
——as to recovery for shock and fright without physical injury, quaere, 111 C 58
damages for wrongful sale of stock is dependent on right of customer to buy other stock within reasonable time, 113 C 366
——reasonable time is question of fact, 113 C 366
that plaintiff lost equity in property through foreclosure by reason of defendant's failure to purchase, not proper basis for damages, 113 C 535
damages allowable for mental suffering if natural and proximate result of physical injury, 113 C 674
——also for danger to life which results in such suffering, 113 C 674
damages for results of fright allowed though physical injury is comparatively insignificant, 114 C 599
statute allowing damages for death limits recovery to death resulting from negligence, or wilful, malicious or felonious acts, 115 C 249
——properly excluded from recovery for breach of implied warranty, 115 C 249
where judgments are rendered against different persons for same cause of action payment of one is satisfaction of all, 115 C 249
——satisfaction of smaller precludes collection of larger except costs, 115 C 249
where recovery allowed for same injuries against one defendant for breach of warranty and greater one against another for negligence general rule may be modified, 115 C 249

——payment of damages by former reduces those collectible against latter by amount paid, 115 C 249
plaintiff's mother by bringing action as next friend waived her right to recover hospital expenses in his favor, 115 C 457
hospital services rendered injured plaintiff are recoverable by him though paid by another, 115 C 461
bruises and contusions may be basis of awarding some damages apart from resulting suffering, 115 C 469
every invasion of a legal right imports damage, 115 C 469
pregnant woman on sidewalk near automobile collision fainted, fell and suffered miscarriage; fact that results could not be anticipated by drivers no reason for denying liability; jury might find negligence proximate cause of injuries, 115 C 650
in slander action plaintiff permitted to recover for results due to publicity incident to bringing of action, 115 C 719
in trespass for washing down of soil from premises of adjoining owner, loss due to interference with garden requiring purchase of vegetables properly recoverable, 115 C 724
liability for fright or shock caused by negligence does not extend to effects of subsequent brooding over the negligent conduct or danger to which it has exposed person affected, 116 C 235
where contributive action between two parties, there being no concert between them, causes damage, there is no legal difficulty in distinguishing between them, 116 C 292
——party liable for damage which it is reasonably probable resulted from his negligence, 116 C 292
bill for medical attendance on plaintiff, paid by defendant, should not be assessed against latter as damages, 117 C 103
where count based on alienation of affections and other on adultery, each alleging loss of consortium, plaintiff might recover for that loss under each, 117 C 206
——but jury should be warned against giving damages under both for same loss, 117 C 206
fact that certain bills for expense incurred as result of accident had not been paid, does not prevent their recovery, 117 C 435
court's charge that if plaintiff incurred bills for medical services which she was obliged to pay, it was not essential that they were actually paid, correct, 117 C 686
——and statute de expenditures by husband recoverable by wife when husband indorses complaint not applicable where obligations were incurred by wife herself, 117 C 686
where conduct of each of defendants was proximate cause of accident they are liable jointly and severally, 118 C 633
——plaintiff could recover entire damages from either and defendant paying them would have no right to contribution, 118 C 633
——or plaintiff might have sued either alone and compelled that one to pay damages, 118 C 633
though doctor failed to use proper care in visiting plaintiff promptly after being informed of her condition, *held* she could not recover in absence of testimony that earlier treatment of case in reasonable probability would have aided her, 119 C 300
——testimony that earlier treatment might have been beneficial insufficient, 119 C 300
plaintiff *held* not entitled to damages from defendant for building street in only portion of land referred to in former's deed as "proposed street," though entitled to injunction against obstructing "strip" which remained, 120 C 511
court sustained in concluding ear trouble was not caused by fall, on conflicting medical testimony, 120 C 693
right to recover money expended for care of wife before action, made necessary by personal injuries ordinarily belongs to husband not to her, 122 C 338
——basis of right is that they were paid by him not as volunteer but in pursuance of duty to support, 122 C 338
right to recover expenses includes those which have been incurred but not paid; rule applicable to husband, 122 C 338
——basis of such recovery by husband is reasonable probability that he will pay, 122 C 338
——under facts of particular case there might be exception where it appeared reasonably probable that wife and not husband would have to pay, 122 C 338
public utility which shuts down or threatens to shut down service where there is bona fide dispute as to liability or amount of bill, liable to customer for damages naturally flowing from act, 123 C 180
Supreme Court ruled that only such substantial damages as could be shown could be recovered for breach of trust, where bank as financial agent invested in mortgage which it held in its own name instead of as trustee, 124 C 151
——fact that property involved was worth more than the debt secured would not tend to establish such damages but rather the contrary, 124 C 151
——plaintiff's contention that it should not, in equity, be left with property on its hands because it could not legally hold it under its charter, not sustainable, 124 C 151

——nor was plaintiff entitled to counsel fees made necessary by attempt to secure something to which in law it had no right, 124 C 156
as incident to decree of specific performance court may award purchaser damages for wrongful withholding of property, 124 C 569
——aim is to place parties in same situation as if contract had been performed and rule of damages at law does not apply, 124 C 569
——amount is fixed by application of broad equitable principles, 124 C 570
——where court merely found reasonable value of premises and amount of yearly taxes, no sufficient basis for plaintiff to claim damages, 124 C 570
when one by his negligence has injured another, he is not relieved from paying any part of the compensation because payment thereof has been made by third party, 125 C 293
——rule applicable notwithstanding fact that payment is made by employer to employee who is injured by tort of fellow employee, 125 C 293 and see WORKMEN'S COMPENSATION
where second injury occurred nine months after first due to slipping of crutch which plaintiff was using with due care, under doctor's orders, and as result of first injury, inclusion of damages for second injury in the award was correct, 125 C 366
where husband compelled by injury to wife to make expenditures to aid her in recovery or for services in maintenance of family, he may recover their amount, 125 C 387
——though damages due to incapacity of wife are recoverable by her and not her husband, sums actually paid by latter are on different basis, 125 C 390
——indorsement of writ by husband under statute sufficient authority to include such amounts in judgment for wife, 125 C 387
while right to recover expenses made necessary by injury to wife is ordinarily in the husband, wife may sometimes recover them, 126 C 146
——as where in part they were paid by her relatives whom she had promised to reimburse and in part she was looked to as debtor, 126 C 146
attorneys' fees not recoverable as item of damage unless allowed by statute or contract, 126 C 359
where goods all sold without loss, no damage resulted from claimed false representations tending to hinder disposal of stock, 126 C 506
plaintiff entitled to recover full compensation for all damage proximately resulting from negligence, though injuries more serious than normal because of pre-existing physical or nervous conditions, 126 C 644
where negligence proximately caused fright or shock in one who is within range of ordinary physical danger and this in turn produced injuries such as would be elements of damage had bodily injury occurred, there can be recovery, 128 C 231
——but trier should use caution and scrutinize evidence with care; if a jury case, should instruct them to use like caution, 128 C 231
——so when plaintiff suffered nervous shock and fright from live wires hissing about automobile in which he was sitting, causing him to shake and tremble, and he was in hospital a month and pre-existing diseases were aggravated, 128 C 231
——court in error in charging that to recover he must prove contemporaneous injury of traumatic nature, though it be slight, 128 C 231
cases dealing with recovery for injuries resulting from fright or nervous shock reviewed, 128 C 234
——no recovery for mere fright, nervous shock or other mental disturbance where no outward manifestation of their effects, as those mental states standing alone not legal injury, 128 C 235
mental suffering consequent on physical injury is permissible element, 128 C 236
——included is apprehension of danger of death caused by the injury, 128 C 236
there can be no recovery in personal injury action for value of services rendered gratuitiously by state-supported or other public charity, 129 C 203
in absence of indorsement by husband upon writ, wife may recover expenditures if it is found that it is not reasonably probable that the husband would have to pay them but it is probable that she will be called upon to do so, 129 C 356

§ 3. Measure of Damages for Breach of Contract

§ 4. ——General Rules

rule of, for breach of express contract, 5 C 227
when profits are recoverable as damages, 12 C 133, 51 C 426, 57 C 493, 74 C 541, 77 C 67, 78 C 9, 83 C 394, 86 C 453, 494, 88 C 130, 90 C 317, 92 C 427, 94 C 661, 108 C 549, 632, 110 C 242, 112 C 394, 113 C 229, 114 C 190, 119 C 578, 121 C 406
general rules for breach of contract, 57 C 490
——how affected by special circumstances stated and known to the parties, 57 C 491
——when such circumstances will be implied, 57 C 492
where plaintiff is deprived of the benefit of a contract he may recover what he has lost or its value, 59 C 283

damages must be such as parties would contemplate, 67 C 474, 68 C 234
damages for breach of contract are legal equivalent of performance, 69 C 666
cardinal rule is fair compensation, 79 C 398, 78 C 198, 85 C 144, 87 C 170
on rescission or prevention of performance of contract by promisee, 80 C 134
measure when one is prevented by other party from fulfilling his contract, 84 C 555, 87 C 41, 92 C 427, 94 C 661, 687
measure is what it will cost to make the injured party as well off as if the contract had been fulfilled, 85 C 212
amount may sometimes be ascertained by fixing the value of the property with and without performance, 85 C 212
cost of performing omitted act is sometimes measure of damages, 85 C 212
the special remedy prescribed by a contract for its breach does not exclude damages given by law, 98 C 729
date for performance of written contract extended by oral agreement; damages ascertained as of date fixed in last extension, 101 C 265
damages for breach of contract are such as can fairly be found to have been in contemplation of parties, 118 C 585
in contract action plaintiff is entitled to recover compensation which will leave him as well off as he would have been had there been full performance, 121 C 299

§ 5. ——Sales of Real Estate

measure of, for breach of covenant of warranty, K 3, 14 C 254, 46 C 510
for breach of covenant of seisin is the consideration paid and interest, K 3, 2 R 46, 4 C 516, 14 C 245
——where breach is only partial, proportional to failure of title, 10 C 435, 41 C 130
——where title is afterwards made complete, only nominal damages, 41 C 132
agreement to procure land or refund purchase money; on breach the full sum advanced to be refunded, 2 D 416
damages for breach of seisin may be amount of prior mortgage debt, 5 C 265
rule of damages for breach of covenant against incumbrances, 6 C 254, 10 C 435
——actual injury of the incumbrance, 10 C 435, 46 C 510
damages on breach of covenant of seisin are proportioned to failure of title, 10 C 435
for breach of covenant against incumbrances is the actual injury caused by same, 10 C 435, 43 C 139, 44 C 317, 55 C 428
for breach of covenant of warranty is the value of land at eviction, 14 C 254
where covenantee pays amount of incumbrance to free land from it, measure of damages in suit on covenant is amount paid if not greater than value of land, but if greater, then value of land, 43 C 129
for breach of covenant against incumbrances is the actual damage sustained, 55 C 428
——if plaintiff is evicted and there is a total failure of consideration he may recover the value of land at eviction; provided he has paid the purchase money, 55 C 428
——where only partial payment of purchase money, may recover the amount paid with interest, not exceeding however the value of the land, 55 C 428
——where purchaser removes incumbrances he may recover the amount paid for that purpose not exceeding the value of the land, 55 C 428
where purchaser paid nothing and is not evicted he can recover only nominal damages for breach, 55 C 428
for breach of warranty; immemorial usage where warrantor defends or is cited in is to give the value of the land and costs incurred in the action of eviction, 61 C 404
——whether "costs" include counsel fees, quaere, 61 C 405
——exception to above rule where deed is reformed; value of land alone *held* the amount of damages, 61 C 407
breach of warranty in deed, 75 C 120
if vendor agrees to make improvements on real estate, cost of making them admissible as damages, 85 C 212
on breach of contract to buy land jointly, build house, and share rentals, 86 C 453
——if contract is repudiated, profits lost including prospective profits reasonably certain, are the measure, 86 C 453
for breach of covenant against incumbrances because of prior lease, damages are real injury caused thereby, 87 C 165
——fair rental value can be recovered, not reduced by rent that might have been paid if grantee had recognized and accepted lease, 87 C 165
damages for breach of warranty, 93 C 701
for breach of contract for exchange of properties; where plaintiff has fully performed, or partially performed, 104 C 366
for breach of contract to convey real estate, measure of buyer's damages is difference between contract price and value of land, 107 C 207
measure of damages for breach of contract to exchange real estate where plaintiff has performed and defendant has both properties, 108 C 465
breach of contract to convey land; nominal damages; expenses; substantial damages if market value was greater than agreed price, 113 C 535
where net value of properties to be exchanged was equal, verdict awarding substantial

damages for defendant's failure to exchange as agreed was excessive, 113 C 535
false representation in sale of land; difference between value of property conveyed and value had it been as represented, 116 C 156
where conveyance is of an unconditional fee and there is breach of covenant, measure of damages is value of property, 123 C 121
——otherwise where covenant is in a mortgage, 123 C 121
in action at law for breach of contract by which defendant is deprived of use of real property, rental value is often allowed as fair measure of compensation for failure to perform, 124 C 569

§ 6. ——Sales of Personal Property

rule of, for breach of contract for future delivery, 2 C 487
rule of, for breach of special contract of sale, 12 C 132
——profits anticipated on resale are not to be regarded, 12 C 133
for breach of contract to deliver, 19 C 215
——exception in case of stocks; and of goods paid for in advance, 19 C 216
rule of, for refusal to accept goods ordered, 20 C 48
rule of, for false warranty of seeds already planted, 33 C 515
for breach of warranty of personal property is the difference between warranted and actual value, 37 C 135
goods to be paid for in gold or its equivalent; *held* plaintiff could recover value of gold at the time debt was due, 41 C 27
in suit against agent for selling at less than agreed price, plaintiff *held* entitled to recover balance of agreed price with interest and less commissions, 58 C 221
failure of vendor to deliver goods sold; inability of vendee to complete sales from such goods, 67 C 473
failure to deliver goods as agreed, 74 C 541, 79 C 104
cost of replacing bricks in pavement warranted for five years, 78 C 689
on breach of warranty in sale of horse, 79 C 126
damages recoverable by vendee after lawful rescission of sale, 79 C 127
if one fails to prove agreed price, can recover reasonable price, 83 C 65
for refusal to accept goods ordered, 85 C 144, 90 C 481, 93 C 689
for failure to deliver goods as agreed, 85 C 613
balance of purchase price can be recovered if goods are resold, 86 C 22
under Sales Act in cases other than sale and delivery; anticipatory breach; prospective profits, 86 C 494
cannot recover damages for goods manufactured after notice that buyer repudiates the contract; can recover for profits that would have resulted, 86 C 494
trier must estimate as best he can what goods vendee would have sold; cannot presume he would not have sold any, 86 C 495
where vendee repudiates contract of sale, lost profits are recoverable, 88 C 130
if builders do not complete boat in time, substantial damages are allowed even if boat is for pleasure not profit, 89 C 51
——are such as might be reasonably anticipated, 89 C 51
vendor's damages for vendee's wrongful refusal to take goods is difference at time and place of delivery between market and contract price, 90 C 481
automobile agent can recover commission and expenses in refusal to take car, 90 C 481, 486
measure of recovery from one who wrongfully refuses to take article he contracted for, 91 C 26
when vendor refuses to deliver; damages determined when vendee has knowledge of it and remittitur allowed if they are found on a basis that makes them too large, 93 C 123
on breach of warranty of personal property, 93 C 701, 95 C 248
sales; nondelivery of goods sold, 97 C 450
measure of, for wrongful neglect or refusal to deliver goods agreed to be manufactured, 98 C 563
profits recoverable for nonacceptance of goods, 98 C 689
——if no market for goods entire price may be recovered, 98 C 689
——effect of release by third party of any claim of damages on account of seller's failure to take goods intended to fulfil contract, on latter's right against buyer, 98 C 689
——interest allowed for what time where buyer defaults, 98 C 692
measure of damages is the same for fraud in sale of goods and breach of warranty, 100 C 732
breach of warranty in sale of personal property, 106 C 95
on breach of agreement to purchase automobile buses from conditional vendee, where it claims to have resold them after breach, but they were finally replevied by conditional vendor, 108 C 605
——judgment for nominal damages upheld where only evidence of damage was price secured on resale and jury might have found no such resale or that it was not in reasonable time after breach, 108 C 605
——price finally realized by conditional vendor too remote, 108 C 605
measure of damages is based on difference between contract and market price only when

there is a reasonably available market, 108 C 632

on refusal of buyer to accept goods where there is an available market, 108 C 632

——where they are to be manufactured and contract is repudiated, 108 C 632

——same rule applies where they are to be sent on order and orders not given within time set, 108 C 632

——in such case lost profits are recoverable, 108 C 632

where broker did not send stock to bank as directed and bank returned it, damages are difference between contract price and market price on subsequent refusal to deliver, 111 C 709

for failure to deliver goods sold, is difference between cost under contract and cost plus delivery from nearest convenient wholesale market, 112 C 385

——buyer not bound actually to buy others in market, 112 C 395

——he cannot ordinarily recover profits he would have earned on resale, 112 C 394

where goods returned by purchaser and resold by seller without rescission, is difference between contract price and amount received, 112 C 646

where vendor fails to deliver articles for vendee's use in manufacturing articles for sale, loss of profits proper element of damages, 113 C 229

——if vendee has made outlays for materials, loss on them recoverable, 113 C 230

——also storage charges until they can be disposed of, 113 C 230

damage for failure to deliver goods, 114 C 190

——statutory rule of market value not applicable where there is no available market, 114 C 190

——as where plaintiff having gasoline station had exclusive sale of defendant's products and agreed to sell them alone and defendant refused to make further deliveries, 114 C 190

——in such case profits which might have been earned are proper measure, 114 C 190

damages for breach of warranty do not include those for death, 115 C 249

——are not restricted to difference in value of goods where special circumstances show special damages, 115 C 249

for death resulting from swallowing tin in can of corned beef; implied warranty of fitness by dealer, 115 C 249

contract to produce and deliver sales activator plan, 121 C 397

——damages for breach by purchaser are profits plaintiff would have made, 121 C 406

breach of warranty in sales contract; ordinarily difference between value at time of delivery and value if it answered warranty, 125 C 703

——but where rental of another machine made necessary by vendor's wrong, such rental properly allowed, 125 C 700

breach of warranty in sale of food; measure more liberal than difference between cost and actual value where special circumstances are present with proof of special damage, 127 C 225

§ 7. ——Leases

breach of present lease of premises already occupied under a former unexpired lease; *held* lessee entitled to rent paid in advance, 57 C 495

——and the difference between the rent to be paid and the value of the term, 57 C 495

——also special damages proved under the circumstances, 57 C 495

——but not expenses incurred after refusal of possession made in bad faith, or if unreasonable, 57 C 492

on counterclaim by tenant that poor heating facilities prevented subletting, 64 C 556

breach of lease; general rule; special damages, 75 C 482

on breach of tenant's agreement to use premises for bakery, preventing any further use of them for that purpose, 80 C 192

for eviction of tenant, value of unexpired lease, mental suffering, exposure, loss of time, expense, value of household effects constitute measure, 86 C 264

damages for breach of lease are such as would be natural consequence and fairly within contemplation of parties, 101 C 690

under agreement for rent of derrick, plaintiff not entitled to damages after date when he reasonably should have removed it from defendant's land, 104 C 222

in action for rent, and not damages for breach of lease, deduction for failure to relet premises not permissible, 111 C 53

for breach of covenant to pay rent, 120 C 321

§ 8. ——Miscellaneous

measure of, for breach of contract to pay joint debts; surety, 2 R 414

expense of trying pending suit after revocation of submission, is not to be included as damages in action for the revocation, 2 R 485

sum specified in note payable in cloth at fixed price per yard; damages *held* the amount specified without regard to change in price, 3 C 60

rule of, for breach of probate bond, 12 C 37

rule of, for neglect to indemnify and do act for plaintiff's benefit, 21 C 127

rule of, for breach of contract to deliver bond and guaranty of payment, 33 C 496

rule of, for dismissal before expiration of contract time, 37 C 539
——party dismissed bound to use ordinary diligence to secure other work, 37 C 540
defendant may recoup actual damage by servant's leaving without notice agreed upon, 40 C 373
——sufficient to approximately estimate such damage, 40 C 373
for breach by railroad company of contract to keep cattle pass in repair; prospective damages not allowed, 43 C 454
agreement for advertising space to be resold; remedy *held* to cover profits to be made on resale, 51 C 426
——also expense of remedying small defects, 55 C 187
in suit on bond for faithful performance, only the amount equitably due can be recovered, 53 C 447
under agreement with A to have percentage on all sums received for patents over a certain amount, *held* worthless stock taken by A not to be included, 53 C 448
in action against maker of negotiable accommodation note by indorsee, bona fide holder, if defendant, proves it was obtained from him by fraud, 64 C 73
on breach of agreement to spread oyster shells; price of substitute material where shells not obtainable, loss from derangement of business; expense of preparing ground, 68 C 221
on replevin bond, 71 C 87, 74 C 392, 551
——interest allowed, 71 C 92
on bond given to dissolve attachment, 74 C 174
in action of debt on bond only real damage recoverable, 74 C 175
in action of debt on bond; interest may cause damages to exceed penalty, 81 C 252
on breach of contract to pay for services rendered by provision in a will, 82 C 647
under insurance against loss from strikes the net profit for year preceding strike is basis for computing loss, 83 C 394
under strike insurance the amount of recovery for partial loss is that proportion of net profits and fixed charges which the production prevented by the strike bore to the average daily production, 83 C 394
if employee wrongfully discharged, salary for balance of term can be recovered, 85 C 421, 90 C 694
on failure to release a mortgage whereby plaintiff is unable to raise money to meet another mortgage, which is foreclosed, 85 C 635
mutual obligations between the parties should be taken into consideration in assessing damages so that real value rather than value of legal title as it appears of record should be plaintiff's recovery, 85 C 636
measure of recovery where note and property given in forming a partnership, the other partner having misstated the property he contributed, 86 C 100
for failure to perform promise to pay debts of another, measure is debts unpaid with interest from date of promise, 87 C 49
on breach of contract by A, who promised to pay debts of B; damages run from date of agreement, 87 C 50
damages for breach of advertising contract were reasonable profits, which were the contract price less expense, 90 C 317
employee whose employment is broken can recover damages for entire term at once or wait until his engagement ends, 90 C 694
building contractor prevented by owner from finishing work recovers money expended, and profits to be realized, measured by contract price less cost of materials and labor necessary to complete contract, 92 C 427
in action on common counts contract price can be recovered less certain deductions, 93 C 381
bailment; expense of bailee in preserving goods, 93 C 576
for delay in returning scrap; damages the value of the use of the detained copper, 94 C 314
on breach of contract to run a farm, damages are one half the difference between original inventory plus value of stock subsequently purchased and inventory at time of breach, 94 C 613
city's wrongful termination of a bridge contract, 94 C 661, 687
agreement to provide sum which would yield certain income during life of promisee, where promisor dies without performing, 96 C 471
where promise was made to give a sum such that, including the proceeds of $20,000 already provided, the promisee would receive an annual income of $2500 to $3000, not error for court to assume that $20,000 would produce $1000 income a year, 96 C 492
where owner of building repudiates building contract, 97 C 92
revocation of contract giving broker exclusive sale of property, 97 C 164
discharge of employee; should include unpaid salary at time of discharge and salary for rest of term less what was or might have been earned, 97 C 650
all indebtedness, past and future, or none, *held* recoverable on written guaranty, 98 C 82
damages recoverable by contractor, contract price less reasonable cost of completing work, 98 C 655
——if no evidence of such cost be offered by contractor, he cannot recover at all, 98 C 656

where A enters into contract to paint building, with provision permitting plaintiff, original contractor, to perform on default and recover excess cost and sums spent to remove liens, 98 C 794

expense of repairs due to faulty construction of roof, 102 C 152

costs and counsel fees in defending prior action by third party, recoverable in action for breach of implied warranty of authority to act as agent, 103 C 110

wrongfully discharged servant entitled to compensation for full term of employment in absence of evidence that he should have found other employment, 103 C 553

for breach of bailee's contract to repair fur coat, 103 C 685

——bailor's damage to be tested by value of coat for her personal use, not value for any other purpose, 103 C 685

measure of damages for delay in completion of building is ordinarily its rental value, 104 C 430

manufacturer *held* not entitled to recover increased cost of labor in one city because of builder's delay in completion of factory in another, 104 C 430

in action against builder for delay, *held* he was not entitled to offset interest upon payments retarded because of delay, 104 C 430

on policy covering theft of automobile where car was on lease and lessor had an interest in it, 106 C 519

in assumpsit based on performance of services under unenforceable contract where no benefit is conferred, 107 C 187

loss by bailee of fifty-nine barrels of liquors; bailor entitled to wholesale price of same kind of liquors, not retail price of liquor sold in pints, 108 C 659

general rule in contract is to put plaintiff in as good condition as though profit had been made, 110 C 242

——in case of failure to completely perform building contract, expense of making good deficiency is rule, 110 C 242

——so where defendant agreed to do part of work for which plaintiff submitted bid and defaulted, plaintiff can recover extra expense it was put to to secure another to do work, 110 C 242

on breach of promise to marry, as to recovery based on conveyance of plaintiff's property to defendant to be held until marriage and then reconveyed, 110 C 432

in action by mortgagor who has become liable to pay debt by reason of default of grantee who assumed mortgage, 112 C 442

one who has rendered services under an agreement to receive compensation by devise of land, unenforceable because of Statute of Frauds, may maintain an action for the services rendered, 116 C 108

——measure of damages is reasonable value of services and not that of the property agreed to be conveyed, 116 C 108

measure in action against agent to procure effective burglary insurance is amount he could have received under policy procured in accordance with defendant's undertaking, 118 C 554

——incumbent on defendant to prove that plaintiff suffered no damage in that such risk because of prior burglary was uninsurable, 118 C 554

where mortgagee failed to advance money as agreed, in absence of other evidence mortgagor's inability to use it to discharge prior mortgage not basis of damages, 118 C 585

where administrator continued business without authority, mingled funds with own, kited checks, and could not account, measure of damages in suit on probate bond was amount coming into his possession less what was salvaged by sale, plus compound interest from date of breach of bond, 120 C 337

——compound interest is in lieu of unascertainable profits, 120 C 337

——but amount of recovery in such action goes no farther than possible right of person for whose special benefit action is brought, 120 C 337

quantum meruit for services rendered decedent; measure is value of services, not value of property promised to be left by will in compensation, 121 C 97

agreement to indemnify sureties on bail bond; plaintiffs entitled to recover not only sum agreed in bail bond but expenses in avoiding liability on it, whether in contesting action brought by State or in attempting to secure apprehension of prisoner, 122 C 21

uncompleted construction contract; contract price less cost to defendant for completing the work and payments already made, 127 C 75

——rule of damages for personal services rendered not applicable where plaintiff employed assistants, etc., 127 C 78

§ 9. Measure of Damages in Tort

§ 10. ——In General; Miscellaneous Cases

for failure to return and for false return of execution, damages are the amount of the execution, 5 D 222

limited to value alleged of goods taken in trespass, 7 C 278

——further damages allowable for malice or insult accompanying taking, 7 C 279, 10 C 388

in action against officer damages are limited to injury sustained by his neglect, 10 C 6

in trespass, indemnification for actual injuries, 12 C 580

——attending circumstances to be considered in estimating, 12 C 580, 39 C 128
——aliter if they per se constitute separate cause of action, 39 C 128
in trespass for taking grass on execution are cost of cutting and curing, 15 C 358
——no allowance to defendant of this cost where included in execution, 15 C 358
rule of, in replevin where property has not been returned, 18 C 557
rule of, for a trespass bona fide under claim of right, 19 C 159, 170
assault; expenses of former trial may be included when, 19 C 250
in trespass for goods taken under claim of right is value of goods and interest, 29 C 485
——in such case further damages are not allowed, 29 C 486
trespasser in good faith is liable for actual damage inflicted, 40 C 321
for a diversion of water is actual value of injury sustained, 42 C 139
——not based upon highest value water might have if put to a conceivable use, 42 C 139
——damages for deprivation of right to flow lands, 42 C 140
rule of, for wrongful taking by officer on execution, 42 C 320
rule of, in trover and trespass for injury to property attached, 44 C 174
rule of, for illegal taking on attachment where a valid reattachment is made, 45 C 505
rule when officer fails to produce the property attached on execution, 48 C 138
for taking and detention, where property is useful only for sale and consumption is the interest on its value, 62 C 559
——if property has depreciated, depreciation must be added to the interest on value before depreciation, 62 C 559
unlawful investment of funds by trustee; compounding interest, 67 C 187
in action against officer for negligent escape and failure to return process, 70 C 143
in action for wrongful attachment, 70 C 341
damages akin to interest for delay in making compensation for injury, 72 C 705
malicious prosecution, 73 C 115, 84 C 111, 86 C 249, 91 C 448, 102 C 439
detention of lunch wagon wrongfully replevined, 74 C 551
wrongful investment by directors, 75 C 555
depriving life tenant of possession of real estate, 76 C 599
wrongful expulsion from membership in voluntary association, 76 C 653
temporary occupation of highway by railroad; where authorized and railroad has power to condemn, 77 C 439
fair compensation is the cardinal rule, 78 C 198, 79 C 398, 81 C 288, 88 C 590
alienation of husband's affections, 78 C 296
for failure to account for money due, 80 C 92
where a town wrongfully took land permanently for highway the value of land is given without deduction for benefits, 83 C 411
——operates as bar to any future action for damages, 83 C 411
in tort, rule stricter than in contract, 83 C 417
only actual damages sustained, recovered for violation of injunction, 83 C 418
in malicious prosecution; expenses of litigation, 84 C 111, 86 C 249
elements of general damages in libel and slander, 85 C 23, 102 C 448
for wrongfully claiming and patenting an invention, damages not confined to property value of model, but to all damages naturally flowing from wrongful act: money expended in making model, expense of moving machine, loss of profits, 87 C 75
for failure to abide by arbitration award include expenses and counsel fees, 87 C 678
for alienation of affection, 90 C 94, 95 C 556
compensation, not punishment, foundation of damages in libel and slander, 92 C 236
in libel, effect of actual malice, 92 C 236
for failure to unload fruit, can recover repacking and commission charges, 93 C 576
wrongful detention of personal property that has a usable value; value of its use together with depreciation is the measure, 94 C 481
——rule applies to actions on replevin bond, to actions in trover, and for injuries to personal property, 94 C 481
for failure of voluntary grantee to reconvey on rightful demand, 97 C 275
where broker purchases property in his hands for sale through a dummy and resells at a profit, 99 C 366
——damages recoverable by principal are profits on deal less expenditures of broker in repair of property with interest, 99 C 371
for breaking up a troupe of performing lions by wrongfully attaching a part, 99 C 593
measure of defendant's damage in replevin, 100 C 96
where A purchased goods of broker and later they were taken from him in action by owner from whom they had been stolen, A can recover of broker price he paid and costs and counsel fees, 103 C 110
measure of damages in action for abuse of process, 105 C 177
for slander per se without proof of special damages, 105 C 533
measure of damages for loss of goods by innkeeper is market value, 106 C 551
what is market value; how established, 106 C 551
for illegal eviction by landlord, is difference between market value for unexpired term of lease and reserved rent, 109 C 164

——not between worth to tenant and agreed rental, 109 C 164
damages recoverable for wrongful failure to sell stock of customer, 113 C 366
——duty of customer himself to sell stock does not obtain until he has secured control of it, 113 C 366
——he is under no duty in order to obtain such control to pay broker full purchase price, 113 C 366
——where broker finally turns stock over to plaintiff, damages are to be determined as of that date, 113 C 366
——where broker finally sold some of stock, damages to be determined as of date of that sale, 113 C 366
damages for encroaching of wall of building under ground which interferes with construction of building by plaintiff, 113 C 420
——cannot be based on cost of reconstruction of building after it had been built despite position of wall, 113 C 420
in libel case, 113 C 574
damages for alienation of affections incapable of precise measurement, 114 C 479
gist of action for alienation of affections is loss of consortium; is property right; plaintiff may be deprived of it entirely or may lose substantial part, 117 C 206
——damages are measured by extent right has been destroyed or impaired, 117 C 206
——can recover only for so much of loss as occurs within period of Statute of Limitations, 117 C 206
rule of damages for criminal conversation, 117 C 212
interest allowed as damages for wrongful detention of money; question is whether detention wrongful under circumstances, 118 C 325
unjust enrichment, value of improvements and expenditures; set-off of rental value of land, 120 C 535
rule of damages where trustee deposits or invests trust funds in own name, 121 C 558
——usual rule is that he is liable for any loss, 121 C 558
——where loss is due to circumstances which would have brought it about though investment had been made in name of trustee as such, result is to impose penalty; imposition of such penalty should be strictly guarded, 121 C 558
——so where bank in good faith in accordance with established practice takes mortgage in own name, files declaration of trust, and loss is due to general business conditions and would have occurred anyway, there is no reason to impose penalty, 121 C 558
——beneficiary entitled to recover such losses only as resulted from fact that defendant took note and mortgage in own name, 121 C 558
measure of damages where all assets of corporation are transferred illegally and dissenting stockholder seeks recovery only on basis of wrong he has suffered, 123 C 643
plaintiff entitled to recover for all damages caused by wrongful act whether or not results were to be reasonably anticipated; test is, did act cause damage, not would such an act be likely to cause such a damage, 128 C 62
——but where claim is made for future damage, it is restricted to that which, with reasonable probability, will result in future, 128 C 66

§ 11. ——Personal Injuries and Death

danger and peril as well as mental suffering of injured party are to be regarded, 22 C 298
action for injury by defect in bridge; expenses of trial included, if culpable neglect be shown, 24 C 497
mental suffering incident to risk and personal danger to be regarded, 27 C 300
rule of, for injury to physician by negligence of common carrier, 34 C 560
money paid for work, while party wantonly injured was unable to labor, is recoverable as, 38 C 233
damages ordinarily should be limited to actual compensation, 47 C 75, 48 C 472
——expenses of suit may be added, if gross negligence be found, 47 C 75
in suit by husband and wife for her personal injuries the expenses of her sickness are not recoverable, 56 C 486
——charge of court authorizing such recovery *held* erroneous and ground for new trial, 56 C 486
——verdict not saved by presumption that jury included no improper element of damage, 56 C 487
assault and battery; plaintiff is entitled to damages ordinarily and naturally resulting, 60 C 58
——special damages must be averred in order to recover them, 60 C 61
for death by negligence, under statute, is based on injury to plaintiff's intestate, 61 C 157
——not on loss suffered by wife and children by the death, 61 C 157
personal injury; loss of earning capacity and profits, 77 C 65, 89 C 697
in personal injury no definite rule possible; jury's conclusion ordinarily final, 82 C 291
death case; pain, suffering, grief, not considered in New York; quality, character, capacity, and condition of decedent is, 83 C 278
from bite of dog, incapacity up to bringing of suit considered, 84 C 117

$5000 under statute does not prove this the maximum value of life, 85 C 112
results happening after action brought may be included; death of person assaulted, 87 C 306
——recovery may be had for pain and suffering prior to death as distinguished from action for death, 87 C 306
damages for death measured by loss to the estate of the deceased, 87 C 328, 461
under Federal Employers' Liability Act, 87 C 337
charge that jury should disregard bills paid or assumed by defendant on account of injury to plaintiff is proper, 89 C 14
mental anguish must be proximate result; anxiety over illness of wife not proximate result of injury to husband, 89 C 405
age, expectancy, physical condition, earnings, also probable future earnings, bearing in mind the possibility of their being affected by sickness and accident are considered for loss of life, 90 C 35
estate of decedent is entitled to some damages for death alone awarded without considering expectation of life or probable accumulations, 92 C 678
charge that estate of deceased receives sum equal to net earnings during decedent's expectancy, after the age of twenty-one, does not contain all elements of damage, 92 C 678
effect of weakness of leg due to former injury as intensifying loss, 94 C 619
in negligence action medical and surgical aid, nursing and hospital service proper elements, 98 C 87
——immaterial by whom paid, 98 C 87
impairment of earning capacity not necessarily measured by wages lost, 98 C 607
——but evidence thereof is proper element to be considered, 98 C 605
——continued receipt of wages or salary while disabled, not available to wrongdoer, 98 C 607
damages in a personal injury action are assessed to date of trial, 99 C 581
——include all future as well as past sufferings and disabilities, 99 C 581
——hence it is error to award interest from date of injury, 99 C 581
——if allowed as a separate item, it may be deducted without a new trial, 99 C 582
in awarding damages to child for personal injury jury may consider vicissitudes and uncertainties of life, 100 C 50
——but weight to be given this consideration not susceptible of measurement by rule, 100 C 50
process of estimating loss of future wages at present value not followed in this State, 101 C 62
no definite rule for assessing damages for personal injuries, 101 C 62
in action for wrongful death, damages recoverable include expenses and losses prior to death, the whole not to exceed statutory limit, 103 C 520
in action by wife against husband for personal injuries, she cannot recover doctor bills unless doctor intends to look to her alone for payment, 103 C 583
mental suffering including apprehended danger to life are recoverable, 103 C 584
no mathematical rule in personal injury cases; question peculiarly within province of trial court, 104 C 300
judgment for $1000 for personal injuries *held* not excessive, 104 C 300
recovery by husband of loss of earnings where he devotes time to care of injured wife, 105 C 88
present worth of loss of future earning capacity, how determined, 106 C 310
on death by wrongful act no test or standard is possible, 106 C 329
——problem is one of best judgment and jury's conclusion should rarely be upset, 106 C 326
negligence, 108 C 549
——where contractor injured, increased cost to him of performing work recoverable, 108 C 549
——various elements considered, 108 C 549
loss of profits on other contracts, 108 C 549
nervous shock as result of accident, 112 C 476
death caused by negligence; pain and suffering; loss of wages, hospital bills prior to death proper elements of damage; funeral expenses and like expenses after death not allowable, 113 C 405
for death not estimated as loss to those who will benefit from recovery, but increment of value coming to estate, 113 C 407
for personal injuries, cannot be computed mathematically, 113 C 525
money paid plaintiff by employer from motives of humanity cannot be set off against impairment of his earning capacity, 114 C 115
expense of operation in plastic surgery where woman's nose was broken, allowed, 114 C 376
loss of services; ordinarily must be left to sound discretion of jury, 115 C 107
loss to estate of decedent by reason of his death; necessity to consider probable duration of life; mortality tables, 115 C 279
hospital services are an element of recoverable damage although paid by another, 115 C 461
bruises, contusions and physical injuries may be basis of damages apart from resulting suffering, 115 C 469

$4500 for death of man aged seventy-four, of unusual physical vigor, earning $65 a month and meals, not excessive, 117 C 67

$1800 for scar which could be relieved by $200 operation excessive and remittitur of $1000 ordered, 117 C 103

$10,000 plus damages, for injuries to forty-nine year old married woman, including 75 per cent disability which would remain permanent at not less than 25 per cent, sustained, 118 C 363

award to married woman of minimum cost of housekeeping aid sustained though no definite period during which such aid would be required was proven, 118 C 366

that plaintiff was not otherwise employed than in preparing her work as designer for season about to commence, and had not been employed for some time, would not affect right to recover for loss of earning capacity, 118 C 427

——this not necessarily measured by wages lost, 118 C 427

recovery of damages for impairment of earning capacity is not measured by loss of wages, 120 C 55

——essential question is what is the pecuniary value of the time lost in consequence of the injury, 120 C 55

$1250 not unreasonable for granular tumor on tongue, with likelihood of second operation, 121 C 394

when employer is liable for injury, he is also liable for any additional bodily harm resulting from acts done by third persons in rendering aid which injury reasonably requires, 122 C 593

——as applied to medical, surgical or hospital treatment, liable only for additional injuries which result from risks normally recognized as inherent in necessity of submitting to such treatment, 122 C 593

——and not for harm caused by misconduct which is extraordinary and outside such risks, 122 C 593

measure of damages for death, subject to statutory limit, is economic value to estate of life of decedent, 123 C 302

——problem one of great difficulty, to be solved by trier, 123 C 302

——particularly in case of young child, 123 C 302

$4000 judgment, of which $1000 was special and balance for injuries suffered and permanent effect of scars on personal appearance, sustained, 123 C 308

liability for lighting up plaintiff's pre-existing arthritis, 128 C 62

where damages for future loss of earning capacity claimed, probable duration of life important element; proof by mortality tables, 128 C 707

§ 12. ——Injuries to Property

in trespass vi et armis damages are not limited by value of property injured, 3 D 450

rule of, for property destroyed by fire through negligence of railroad company; rule the same in any form of action, 47 C 576

for wrongful flowing; damages to mill only alleged; *held* plaintiff could not also get damages for flowing the land, 50 C 349

loss of use of horse as direct consequence of injury is an element of, 53 C 214

impracticable to assess beforehand damage which may result from future fire, 54 C 464

for encroachment upon land is the damage sustained by deprivation of its use, 58 C 73

——and such damage will be limited to past time, 58 C 74

for unlawful cutting of ornamental shade tree, should be for the actual loss, 60 C 387

——reduced pecuniary value of lot to be considered; damages assessed *held* not too speculative or remote, 60 C 390

——does not depend on property being actually sold, 60 C 392

for injury to horses by negligence of railroad company; *held* that plaintiff might recover for reduced market value, 62 C 510

——and the value of their use if they had not been injured, 62 C 509

——but not the amount plaintiff might have earned during the term they could not be used, 62 C 509

right to recover full value of horse injured is not affected by fact that owner killed horse, 63 C 150

destruction of property without malice, 70 C 563

cost of removal of nuisance, 72 C 561

dumping mud on oyster bed, 73 C 190

for pollution of stream, 77 C 322, 86 C 226

——loss in dairy business as result of, 79 C 670

trespass; cutting trees, shade and others, 77 C 701

for injury to road roller; may be shown by cost of repairs less enhanced value by reason of them, 81 C 288

for injury to ice is loss of net profits, 83 C 417

for cutting trees, not limited to value for wood and timber, 86 C 699

for total or partial destruction of personal property (dis.), 88 C 600

owner of automobile can recover for loss of use while undergoing repairs; wages of chauffeur, 88 C 590, 89 C 56

value of automobile before and after injury with cost of repairs, is measure, 89 C 326

in case of injury to automobile, damages cannot always be accurately computed, 89 C 330
for injury to automobile in collision, 93 C 459
for cutting shade trees in highway, 94 C 435
for injury to personal property, as an automobile, not amounting to total loss; loss of use, 96 C 337
for injury to automobile and loss of its use; measure of damages, 98 C 249
——difference in value before and after injury is generally the cost of repairs, 98 C 250
——recovery may in certain cases exceed value of the car, 98 C 249
for loss of use of motor truck injured in collision, 98 C 614
for wrongful injury to realty is resulting depreciation in its value, 99 C 53
where automobile is restored to owner by bailee in damaged but repairable condition, 99 C 528
not established by price of damaged property four years prior to injury; in absence of evidence of reasonable worth at time of injury, 100 C 614
where automobile injured, measure of damages is difference in value before and after collision; repair bill as evidence of it, 106 C 254
market value of property not always the standard; where it does not represent special and peculiar value to the owner, 106 C 423
where woodland available and valuable for school site was burned, mere market value *held* not proper measure of damages, 106 C 423
one who damages house is liable for loss of rental value during period of repairs, 107 C 68
elements of loss of use of truck and necessary deductions, 109 C 376
cases as to loss of use of automobile listed, 109 C 731
damages for destruction of value of advertising material because of faulty packing for shipment, how estimated, 113 C 101
where encroachment of building is abated, plaintiff may recover all reasonable expenses thereof, 113 C 420
proper measure of damages where plaintiff does not remove encroachment, but erects his building by another method, 113 C 420
loss of use of automobile; services of driver, 114 C 78
liability of one maintaining structure which is permanent nuisance for damages once for all measured by depreciation in value of plaintiff's land; pollution of ice pond, 114 C 496
cost of property does not necessarily measure damages for its destruction, 114 C 510
plaintiff occupied part of her two-family house and rented the other part; rentals reduced from $35 to $20 as result of operation of defendant's concrete manufacturing plant; *held* that depreciation in value of her property not measure of damages; entitled to recover only for temporary interference with use prior to bringing action, 117 C 241
——basis for award for reduction of rental values; plaintiff also entitled to damages for discomfort and annoyance, 117 C 241
——such damages not susceptible of exact computation; must be left to sound discretion of court, 117 C 246
if plaintiff's cause of action is based on nuisance resulting in permanent taking of land, damages measured by depreciation in its value, 117 C 246
where injury to automobile is less than complete loss, measure of damages is difference in value between property before and after the loss, with interest, 119 C 262
——evidence of cost of repairs is admissible on issue, 119 C 262
——charge giving impression that where plaintiff had sold car, damages were difference between its value before accident and price realized, in disregard of evidence of cost of repairs, *held* erroneous, 119 C 262
loss of use of automobile; when another car is hired, amount actually expended is measure of recovery, 125 C 386

§ 13. ——Trover and Conversion

conversion on execution by officer; effect on pending suit of return of execution, 1 R 136
in trover, value of property at conversion and interest, 12 C 484, 15 C 305, 19 C 330, 20 C 207, 217, 23 C 528, 26 C 391
rule of, in trover by bailee against general owner; by bailee against stranger, 15 C 305
In trover, only the actual damage sustained is recoverable when property has been returned, 20 C 207, 217, 26 C 486
——expenses of litigation are not to be included in, 26 C 390
no interest allowed in trover unless time of conversion is shown, 20 C 217
unsatisfied judgment against A is no bar to action against B for later conversion, 45 C 147
——judgment in second action should be for full value of property, 45 C 149
plaintiff cannot recover for injury to goods prior to conversion, where complaint is for conversion simply, 63 C 492
conversion of check, 66 C 500
conversion by sale under attachment, 77 C 370
conversion by broker who holds stock under speculative agreement; necessity to keep down damages, 77 C 508, 518

conversion of household furniture, 78 C 198, 86 C 264
conversion of stock; dividends received, and interest on amount realized from sale, 78 C 629
conversion of books, 79 C 342
for conversion damages is actual, not face value, of note, 90 C 41
for conversion of notes, bills and other choses in action, 96 C 233
in conversion where bailee fails to restore automobile in usable condition, 99 C 528
damages for conversion by bailee or loss of an article by negligence is fixed by terms or contract, if any, otherwise by market value, 107 C 99
for conversion of automobile, shown by evidence of cost when new, price paid for it by plaintiff as demonstrator, mechanical condition at time of conversion and opinion of expert who had never seen car, 107 C 366
on conversion of note, 107 C 574
——ordinarily one having special property can recover full damages, 107 C 574
——but against general owner or one in privity with him, as his attorney, only actual damage recoverable, 107 C 574
——where note held as collateral security, this is amount of debt, 107 C 574
conversion or loss by negligence of article bailed is value at time of conversion or loss, with interest, 107 C 712
——value fixed by contract, if any, if not by market value, 107 C 712
——agreement of consignee of goods for sale to pay consignor certain sum for any article not accounted for, 107 C 712
in trover is value at date of conversion, 109 C 117
——rule where article has no market value or has peculiar value not applicable to conversion of automobile, replaceable in market, 109 C 117
——damages where plaintiff holds under conditional bill of sale, 109 C 117
measure is value of goods at date of conversion, 112 C 613
——where assignee of conditional bill of sale of automobile converted had recovered certain amount from his assignor, this properly allowed to reduce damages, 112 C 613
for conversion; value of article at time it was converted, 125 C 455

§ 14. ——Fraud; Undue Influence

in action of fraud in sale of horse no damages are recoverable for keeping before offer to return, 9 C 111
damages may be awarded though no actual money loss has occurred, 12 C 443
expenses of suit may be considered in action for false representations, 24 C 405
rule of, for fraudulently concealing attachable property, 30 C 412
rule of, for false warranty of seeds already planted, 33 C 515
exchange of animals; fraud; terms of contract and not actual value of animals govern plaintiff's damages, 42 C 12
fraudulent transfer of mortgage; nominal damages recoverable though mortgage note has not been paid, 46 C 126
——full damage recoverable where liability and loss is inevitable, 46 C 128
——though defrauding party transferred mortgage for only part value, 46 C 127
if party alleging fraud did not rely on the false representations it is a case of fraud without damage, 49 C 332
in action of fraud, or for flagrant wrongs, plaintiff's expenses of litigation may be included in damages, 55 C 452
——not usual to introduce evidence of expenses, but not error to admit proof of specific expenses incurred, 55 C 452
party defrauded cannot recover in two different suits more than his full damage, 62 C 160
——he cannot retain both judgments, 62 C 160
fraud in sale of property, 70 C 125
fraudulent representations as to success of goods, right to manufacture which is sold, 71 C 1
fraud in exchange of real estate; ignoring mortgage, 73 C 368
breach of right implies damage, 75 C 341
measure of damages on note of one partner to another to make up share of partnership property, where promisee over-valued fraudulently his own property put into firm, 86 C 100
damages recoverable in fraud if contract is accepted, 86 C 481
in fraud difference between what one was induced to pay and what should have been paid is measure; immaterial that property was worth more than was paid, 86 C 481
fraud of copurchaser, overstating purchase price, where A and B agree to buy land, each advancing one half price, 86 C 481
for fraud, damages are such as must be presumed were within the contemplation of the vendor; sale of restaurant, 90 C 624
in fraud, measure is difference between actual value and value as fraudulently represented; exchange of real estate, 91 C 124
damages for fraudulently obtaining real estate for less than it is worth is difference between actual value and price paid, 91 C 404
damages in sale of real estate are value of property at time of sale, 91 C 404
for fraudulent representation, 93 C 701

estimate of market value after goods sold not necessarily fraudulent, 94 C 118
in action for damages for conspiracy in purchasing land for improvement expenditures, less material on hand can be considered, 95 C 79
violation of legal right imports damage, 96 C 221, 455
——though there has been no actual loss, or there has even been a benefit, 96 C 454
——plaintiff is entitled to be placed in the situation he would have been in, had there been no fraud, 96 C 455
——hence right of defendant to recover of plaintiff same amount as was secured by the fraud, will not defeat action, 96 C 455
——where vendee secured return of money paid for car of grain on false representations as to cause of a fire which destroyed it, that he might claim a recovery under a warranty of the grain will not defeat vendor's action on the fraud, 96 C 455
where real and personal property are obtained as a gift by undue influence, 97 C 714
fraudulent representation to architect that building was abandoned but use of his plans thereafter, 98 C 185
——lost profits are recoverable, 98 C 191
where broker by fraudulent representation to agent of owner that he is employed to sell property sells to dummy and latter resells to broker's profit, damages are profits of transaction less amount paid in improvement of property, 99 C 366
ordinary rule on fraud in sale of automobile, 100 C 395
——cost of repairs to put it in running order, 100 C 394
——unusual damages may be allowed, especially where it is represented as fit for special use, 100 C 394
all consequential damages resulting from fraud in sale of chattel are recoverable, 100 C 405
——including repairs necessary to put truck in condition, 100 C 405
damages same, for fraud arising from sale or breach of warranty, 100 C 737
for fraud in sales, where buyer retains property is difference between actual value and value if as represented, 101 C 427
——also any additional expense incurred through loss of interest or otherwise, 101 C 427
finding that it cost buyer $325 to install light fixtures to bring building up to represented rental value, equivalent to finding of difference between actual value and represented value, 101 C 427
where defendant obtains property by undue influence or by lack of plaintiff's mental capacity, damages are value of property less any consideration paid in good faith, 101 C 603
in action for fraud committed in another State rule of damages of that State applies, 103 C 390
——rule for measuring damages in this State and New York distinguished, 103 C 410
——damages by New York law where plaintiff was induced to substitute for right of action for breach of a contract, a new contract which proved valueless, 103 C 390
——in both States expenditures or obligations incurred because of the fraud are recoverable, 103 C 412
our rule gives difference between actual and represented value, plus additional consequential damages, 103 C 410
in action for fraudulent representation in sale of business, 103 C 759
where buyer's agent misrepresents to him purchase price, and thus makes personal profit, he is liable for difference, 104 C 257
measure of damages in action for false representations, 105 C 572
——market value as proof of actual value, 105 C 572
in determining damages market value as evidence of actual value, 105 C 572
——may be sufficient, as where corporation whose stock is in question is so situated that proof of actual value not possible, 105 C 572
——price paid for goods as evidence of value had they been as represented, 105 C 572
measure of damages for fraudulent representations, 106 C 95
fraud in misrepresenting year of manufacture of trucks, 108 C 511
——difference in value may be measured otherwise than by showing market values, 108 C 511
——as by difference in depreciation in trucks of years in question, 108 C 511
misrepresentation of year of manufacture of automobile; opinion of value based on manual and witness' own experience, 114 C 719
measure of damages for false representations in sale of land is difference between value of property conveyed and value had it been as represented, 116 C 156
——where representation was that boundary of property bought was beyond garage but defendant owned adjoining land, damages must take into account easement acquired to have garage remain over line of property deeded, 116 C 156
damages awarded on count based on indorsement of note and on count based on fraud in its sale, with provision that payment on either count would reduce amount due on other, 116 C 418
rule of damages for sale induced by fraud is difference of value of property at time of

sale and what it would have been if it had been as represented, 116 C 425
——finding failed to show plaintiffs damaged by purchase of note through fraudulent representations under this rule, 116 C 426
damages for false representations are measured by difference between actual value of property received and its value had it been as represented, with any consequential damages resulting directly from the fraud, 119 C 578
in action for false representations, plaintiff cannot recover profits which might have been realized if he had not been deceived, unless there is evidence by which such profits can be measured with reasonable certainty, 119 C 578
price paid by plaintiff for goods sold to him under false representations may fairly be taken as value which they would have had if they had been as represented, 119 C 578
fraudulent sale by trustee; difference between actual value which was inventory value and amount received, 121 C 77
where one is induced by fraudulent representations to sell his property, measure of damages is difference between actual value at date of sale and sum defendant paid for it, 122 C 641
——where defendant by false representations induced plaintiff to sell him mortgage for $500 on which balance of $1750 was due, but court found it was actually worth less than $500, plaintiff suffered no loss, 122 C 642

§ 15. Exemplary or Punitive Damages

action for treble damages; court may treble single damages, though such amount would exceed the demand, 2 R 301, 59 C 8
in public prosecution for theft court will not on conviction render judgment for owner to recover treble damages, 6 C 101
vexatious suit; damages, 9 C 309
vindictive damages may be awarded for wanton or malicious injury, 15 C 236, 273, 38 C 529
——expenses of action may be so included, 15 C 236, 19 C 264, 38 C 529
expenses of suit may be regarded; action of fraud for false representations, 24 C 405, 55 C 452, 57 C 84
——it is not usual to introduce evidence of expenses, but is not error to admit proof of specific expenses incurred in suit, 55 C 452
——also in action for injury through culpably defective bridge, 24 C 497
——also may be regarded for wanton or malicious injury, culpable or wanton misconduct, 25 C 575, 26 C 366, 426, 36 C 185
——aliter, if injury be not wanton or malicious, 26 C 366, 427
punitive damages for injury by negligence of railroad company allowable, 29 C 499
taxable costs to be estimated in giving vindictive damages, 30 C 343
exemplary damages given for malicious, premeditated assault, 31 C 162
in what cases may smart money be allowed, 36 C 185
——smart money recoverable only in cases of wanton, malicious misconduct or neglect, 48 C 473
allowed for ejectment from railroad train, under what circumstances, 38 C 530
exemplary, when may be obtained; charge of court *held* erroneous, 52 C 14
in estimating vindictive damages in cases of libel and slander plaintiff's counsel fees may be considered, 57 C 84
where statute provides for treble damages the jury should bring in single damages only and the court must render judgment for treble the amount, 59 C 8
——it must appear that the verdict was necessarily founded upon a violation of statute, 59 C 8
——and *held* in an action under statute, de negligent driving, not to sufficiently appear that the verdict was founded upon a violation of statute, 59 C 9
whether to recover treble damages, statute permitting must be referred to in the complaint, quaere, 59 C 8
statute as to treble damages for injury due to breach of law of road, 66 C 570, 75 C 124
negligence, to justify, must be gross or wanton, 68 C 392
against principal for act of agent, 71 C 369, 76 C 361, 77 C 159
measure of, 71 C 369, 78 C 492, 79 C 267, 303, 83 C 472, 85 C 24, 92 C 236
when granted in general, 71 C 378, 79 C 303, 92 C 243
in slander, 72 C 731 92 C 236
felonious assault, 74 C 50, 78 C 492
statute de treble damages for theft not penal, 74 C 135, 87 C 468
for allowing vicious bull to trespass, 79 C 267
against trades union which directs or approves act of agent, 79 C 414
where tort is committed in violation of injunction, 79 C 670
laws providing for award of treble the actual damages in certain instances constitutional, 82 C 5
——are not penal, 87 C 468
allowed for wanton assault in public place, 83 C 200
to claim treble damages must show facts that act is based on the statute, that act complained of comes within it, and that it is claimed in the relief clause, 84 C 47, 87 C 253, 93 C 247

common-law doctrine of punitive damages not the law of this State, 85 C 24
where error lies in doubling damages awarded, cause is remanded, 87 C 253
statute de double or treble damages must be strictly construed, 87 C 253
technical conversion not basis of, 90 C 41
jury may award exemplary damages, 90 C 381
within discretion of court; verdict not ordinarily set aside, 90 C 625
evidence of plaintiff's expenditures in prosecuting the case excluded, except for exemplary damages, 92 C 155
in libel, amount of recovery for actual malice, 92 C 236
in violation of law of road, must show such violation is sole cause of injury to get double or treble damages, 93 C 247
in slander and libel, where punitive damages recoverable, need not offer evidence of expenses of litigation, 95 C 482
pleadings must afford basis for award, 96 C 693
when awarded in assault action, 96 C 694, 97 C 139
not usual or necessary, but not improper, to offer evidence to show amount of expenses of litigation as exemplary damages, 97 C 133
recovery of exemplary damages in malicious prosecution where express malice is shown, 102 C 439
in libel where actual malice appears, 102 C 453
limited to expense of action less taxable costs; charge must cover them, 105 C 177
in action for malicious prosecution, abuse of process and false imprisonment, when express malice involved, 105 C 177
in action for assault, what constitutes wilfulness or wantonness, 105 C 531
recoverable in action for slander, where there is malice, 105 C 533
expenses of litigation limited to those of present action, 105 C 533
provocation for assault and battery may defeat claim for exemplary damages, 107 C 122
cannot exceed amount of plaintiff's expenses of litigation less taxable costs, 111 C 575
not allowable in replevin in absence of fraud, malice, gross negligence or oppression, 112 C 115
are recoverable in action for libel, 113 C 574
——measure is expenses of litigation less recoverable costs, 113 C 574
——expert testimony is proper, 113 C 586
for acts maliciously or wantonly done in suit for alienation of affections; costs of suit, 114 C 478
proof of provocation allowed in certain circumstances in mitigation of damages, but mitigation goes only to exemplary not compensatory damages, 116 C 549
rule of damages where trustee deposits or invests trust funds in own name, 121 C 558
——usual rule is that he is liable for any loss, 121 C 558
——where loss is due to circumstances which would have brought it about though investment had been made in name of trustee as such, result is to impose penalty; imposition of such penalty should be strictly guarded, 121 C 558
——so where bank in good faith in accordance with established practice takes mortgage in own name, files declaration of trust, and loss is due to general business conditions and would have occurred anyway, there is no reason to impose penalty, 121 C 558
——beneficiary entitled to recover such losses only as resulted from fact that defendant took note and mortgage in own name, 121 C 558
where double or triple damages imposed under rules of road statute, additional sum not damages for the injury, but reward for securing punishment of one who has committed wrong of public nature; recovery of qui tam nature, 127 C 533

§ 16. Mitigation; Enhancement

admissions of one defendant suffering a default are admissible against others, to enhance, 1 D 34
unauthorized delivery of note to maker by collecting agent, 5 D 34
——maker's insolvency is admissible in favor of agent, 5 D 34
aggravating circumstances may enhance damages for injury to personalty, 7 C 279, 10 C 388
evidence of plaintiff's contributory negligence admissible to reduce damages in action against officer, 10 C 7
assault and battery; evidence in mitigation confined to time and place of assault, 10 C 459
inferiority of goods sold may reduce, in action for price when, 12 C 132
partial failure of consideration inadmissible to reduce, when, 12 C 237
——where amount of failure is merely conjectural, 12 C 241
trespass de bonis asportatis; relation of defendant to property, admissible to mitigate, 12 C 579
disregard of physician's orders, as aggravating slight injury; not per se, as a matter of law an aggravation, 29 C 390

plaintiff's recent unfriendliness admissible in mitigation of damages in action for assault, 42 C 208
——to be confined to a time near the assault, 42 C 208
amount of mortgage on piano is not to be deducted in trover and trespass when title is in dispute, 44 C 174
on hearing in, after default, defendant may show that he was guilty of no negligence, 44 C 501
——whether injury be to person or property, 44 C 503
defendant in slander may reduce, by proving plaintiff's reputation for dishonesty, 45 C 236
evidence pleaded as justification of assault may be used to reduce damages, 45 C 245
repetition of slanderous words admissible to show malice in original speaking, 47 C 302
——not per se as ground for additional damages, 47 C 302
surety on replevin bond may show no damage to plaintiff, 48 C 476
——or that damages should be less, the property having been returned, 48 C 476
all circumstances attending an assault are admissible to enhance, 60 C 62
——though complaint demands general damages only, 60 C 62
surrender of goods to person entitled to them as mitigating damages for their wrongful seizure, 68 C 390
all circumstances of assault may be given to enhance damages, 71 C 377, 77 C 600
not enhanced because of humiliating nature of defense urged in good faith, 75 C 275
nature of evidence in mitigation of damages, 77 C 79
in action on officer's receipt, receiptor estopped to attack defendant's title even in mitigation of damages, 79 C 333
benefit from trespass cannot be set off as mitigation of damages, 83 C 411
no obligation on vendor of refused goods to try to sell if there is no market, 85 C 141
duty of promisee to minimize damages from breach of contract, 85 C 181, 93 C 277
discharged employee not bound to show in first instance inability to get other employment, 85 C 421
in action on covenant to repair, can show, in mitigation, damage due to voluntary exposure of goods under leaky roof by tenant, 86 C 8
in case of note given on contract rescinded for deceit, recovery on note is reduced by amount lost in consequence of deceit, 86 C 100
plaintiff cannot be compelled to take course that would subject him to litigation, to mitigate damages, 87 C 84
loss can be enhanced or diminished by showing feeling between decedent and beneficiary, 87 C 328
under Sales Act damages for breach of warranty of quality can be increased by showing special circumstances, 88 C 109
that one did not receive most approved treatment not admissible to reduce damages, 88 C 260
adultery of husband suing for alienation of wife's affections as mitigating damages, 90 C 95
offer to perform after breach of contract, admitted as affecting the damages, 91 C 197
meaning of "aggravation" or "mitigation"; actual malice in libel, 92 C 236
duty of injured one to endeavor to effect a cure tested by rule of reasonable care, 92 C 576
promisee need not disregard his own interests to minimize loss, 93 C 277
on breach of contract, another similar contract made to replace it can be consulted, 93 C 277
owner of truck wrongfully replevied not bound to minimize damage by purchasing another, 94 C 481
where claim is for expenditure for material bought in reliance on fraudulent agreement the market value of any remaining in plaintiff's hands should be deducted, 95 C 79
in assault action, circumstances of provocation may mitigate damages, 96 C 693
——but only exemplary, not compensatory, damages, 96 C 693
damages for personal injuries not mitigated by improper or unskilful medical treatment, 102 C 162
duty to minimize damages measured by reasonable conduct, 104 C 430
duty of injured person to use due care in securing and following competent medical advice, 105 C 90
use of property temporarily after notice of intent to reject it, merely for purpose of mitigating damages, 106 C 95
after buyer's repudiation, seller may refrain from delivering balance of goods in order not to enhance damages, 106 C 372
general duty of plaintiff to minimize damages, 108 C 636
requirements that injured plaintiff use due care to promote recovery, 109 C 87
——basis of rule, 109 C 87
——failure to do so no bar to recovery for initial injury, 109 C 87
——effect is only to bar recovery for additional injury resulting, 109 C 87
plaintiff not bound to prejudice its own position to minimize damages, 110 C 234
——as by losing its own profit or injuring good will of business, 110 C 234

——as where defendant submitted bid for part of work and plaintiff then combined it with own bid for work, and withdrawal of latter would have lost its profits on its own part of work, and injured good will of business, 110 C 234
where landlord does not accept rescission of contract he may sue for entire rent due for term without regard to his ability to re-rent premises, 111 C 53
damage to display screens could not be minimized by repairs to them, 113 C 101
duty of customer to minimize damages by repurchasing stock wrongfully sold by broker, 113 C 366
margin customer not bound to sell stock which broker wrongfully fails to sell until he gets control of it, 113 C 366
plaintiff, ejected from gas station by defendant, could not minimize damages by continuing business, 114 C 193
mitigation of damages in suit for alienation of affections by reason of lack of affection, 114 C 478
injured person must use reasonable care to promote recovery and prevent aggravation of injuries, 114 C 590
——if reasonable care is used in selecting physician, recovery not affected by his negligence or improper action, 114 C 590
——where plaintiff was eight years old, negligence of parent in failing to secure proper treatment not attributable to her, 114 C 590
test of use of care is that of reasonableness and does not depend upon idiosyncracies of personal belief, 114 C 590
——but courts cannot disregard theories as to proper curative methods held by many reasonable and intelligent people, 114 C 590
——charge where parent was Christian Scientist *held* as favorable to defendant as she was entitled to, 114 C 590
breach of employment contract; duty of plaintiff to find other work, 114 C 662
defendant S gave jail liberties bond which he breached and subsequently went into bankruptcy and was discharged; *held* surety not relieved of liability, 116 C 22
——effect of discharge upon question of damages could, at most, be only in mitigation, 116 C 22
proof of provocation allowed in certain circumstances in mitigation of damages, but mitigation goes only to exemplary not compensatory damages, 116 C 549
fact that employer paid full wages to plaintiff not available to defendant in mitigation of damages for impairment of earning capacity, 120 C 58
doctrine of mitigation, applicable to contracts of employment of personal services, does not extend to contracts for performance of specific work where contractor may do it in person or by servants or sublet it, 121 C 397
——party injured not obliged to seek and perform other contracts for benefit of breacher of contract, 121 C 397
——applied to contract for production and delivery of sales activator plan, 121 C 397
——even if this were considered contract for personal services, no evidence that plaintiff could have been gainfully employed elsewhere, 121 C 397
in action for materials and services furnished, defendants not entitled to prove as special defense, even pro tanto, damages suffered from plaintiff's partial breach of contract; items belonged in counterclaim, 126 C 554
——but they would be entitled to show any circumstances which would reduce reasonable value of material and labor furnished, 126 C 554
that nervous condition of plaintiff conduced to produce illness from eating unwholesome food, nil sig, 127 C 227

§ 17. Nominal and Substantial Damages

error reducing damages to nominal sum is ground for new trial, 30 C 424
nominal damages given for breach of seisin where title is afterwards made complete, 41 C 133
demurrer to negligence overruled; actual, found but only nominal, given; judgment reversed, 50 C 341
——*held* could not plead anew and have a new hearing on the facts, 50 C 341
——lower court should render judgment for actual damages, 50 C 341
bare technical right to nominal damages is no ground for new trial, 55 C 102
nominal damages for breach of covenant against incumbrances where purchaser had paid nothing and is not evicted, 55 C 428
nominal damages mean no damage at all; "a mere peg to hang costs on," 59 C 282
nominal damages mean no damages; they exist only in name, not in amount, 60 C 369
——but if there is a real legal right involved small damages are substantial, 60 C 369
where plaintiff is benefited by breach of contract he is still entitled to nominal damages, 61 C 65
rejection of rebutting evidence to affect damages merely nominal, *held* not a ground for new trial, 62 C 246
rule de refusal of new trial where amount is trivial does not apply where the question is the entire right of recovery, 63 C 374
definition of nominal damages, 72 C 389, 84 C 559
if evidence shows amount by reasonable inference, this suffices, 77 C 322

——if it does not, only nominal damages can be given, 77 C 324, 79 C 192
in libel and slander more than nominal damages recoverable if words are actionable per se, 86 C 261
plaintiff entitled to nominal damages at least, if determination of equitable issues adjudicated all facts in his favor, 92 C 297
nominal damages only recoverable where, on nondelivery of goods, it does not appear that they could not be purchased in open market at same or less price than that in contract, 97 C 447
on breach of covenant to renew lease nominal damages only recoverable till dispossession takes place, 98 C 167
for forcible trespass; nominal damages recoverable if proof of special damages fails, 99 C 128
where no proof of loss offered, judgment for $25 regarded as covering nominal damages, 104 C 318
plaintiff not necessarily entitled to new trial where only result would be nominal damages; or where substantial justice done, 106 C 34
in action for continuing nuisance, plaintiff entitled to new trial for nominal damages, 106 C 167
slanderous statements that proprietor of bakery and her products are dirty justify substantial damages without proof of special damages, 107 C 122
nominal damages for assault and battery proper where injuries slight and provocation great, 107 C 122
unless substantial rights involved, new trial not ordered for nominal damages, 108 C 97
one who fails to offer evidence as to damages suffered cannot complain of award of nominal damages, 108 C 190
nominal damages justified where evidence indefinite and uncertain, 108 C 610
new trial need not be granted to enable recovery of nominal damages, 109 C 452
judgment for $200 is for substantial not nominal damages, 110 C 184
verdicts for $573, $240, and $142 are substantial, not nominal, 112 C 229
nominal damages defined, 112 C 230
allowance of only nominal damages for breach of covenant against incumbrances upheld, 112 C 690
on breach of contract to convey lands, injured party entitled to nominal damages, 113 C 535
——measure of substantial damages where facts justify them, 113 C 535
——if on exchange of lands they are found to be of equal value, only nominal damages can be awarded, 113 C 535
every invasion of legal right imports damage and an actual physical injury entitles plaintiff to more than nominal damages, 115 C 469
plaintiff entitled to no more than nominal damages where no damage was proved from stones rolling on his lot from defendant's, 115 C 723
default admits material facts declared on and constituting cause of action and that if these do constitute cause plaintiff has right to recover at least nominal damages, 117 C 258
——if upon hearing court becomes satisfied that cause of action alleged did not exist, plaintiff entitled to only nominal damages, 117 C 257
——and new trial not ordinarily granted for failure of court to award nominal damages; certainly not, if substantial justice is done, 117 C 257
malpractice for removing moles; if lack of consent was established, removal of moles was trespass entitling plaintiff at least to nominal damages; charge that both lack of consent and special damages alleged must be proved, erroneous, 119 C 492
——but as prejudice to plaintiff limited to loss of verdict for nominal damages and costs it was not reversible error, 119 C 492
for breach of duty by fiduciary no recovery of substantial damages can be had except such as were result of it, 126 C 324

§ 18. Liquidated Damages; Penalties

when sum agreed upon may be treated as liquidated, 7 C 295, 58 C 108, 62 C 368
where damages are fixed by contract at two weeks' wages for leaving without notice *held* that such damages were liquidated, 58 C 108
——master, in suit by servant for wages, need not aver or prove damage in defense, 58 C 108
contract to do or not to do a certain thing or in lieu thereof pay a certain sum; *held* such sum was liquidated damages, not a penalty, 62 C 368
when sum agreed to be paid on breach of contract constitutes, 74 C 332
adoption of concurrent remedy as defeating right to, 79 C 492
agreement to pay a certain sum if one breaks a by-law, is, 88 C 332
difficulty in estimating measure of damages and absence of proof that amount agreed on was disproportionate, shows intent of parties that the named sum is liquidated damages, 88 C 333
clause *held* to give liquidated damages in building contract, 88 C 620
having stipulated as to damages greater sum cannot be recovered, 88 C 620

defendant by election deprived himself of recovering liquidated damages and under contract could not recover other damages, 88 C 620
permitted when damage is uncertain in amount and difficult to prove and agreed sum is reasonable, 89 C 51, 110, 90 C 1
agreement to pay a sum for each day's delay in completing a boat is, 89 C 51
damages stipulated if one should engage in a certain business are, 89 C 110
what conditions determine whether agreed amount is reasonable, 89 C 110
measure is what might reasonably have been anticipated by parties at time contract was made, 89 C 111
where damages are liquidated no evidence is necessary of actual loss, 90 C 1
failure to exchange real estate, good grounds for liquidated damages, 90 C 1
when reasonableness is not a question of law, 90 C 4
if building contract is substantially performed, owner cannot complete contract and also claim penalty as liquidated damages, 91 C 280
effect as regards specific performance, 92 C 185
damages not unliquidated if liability can be determined, 95 C 11
taking judgment for liquidated damages waives right to claim lien, 95 C 66
not recoverable where no actual damage was suffered, 97 C 299
——breach of agreement not to engage in kind of business sold to plaintiffs after they had formed corporation and assigned all their business to it, 97 C 299
provision for liquidated damages only valid when so intended; when damages uncertain; and when sum is reasonably proportionate to presumable loss, 101 C 265
party cannot claim benefit of provision for, where he has not performed, 101 C 265
provision for deposit on making agreement of sale, to be forfeited if any one of various undertakings are not kept, 101 C 265
——$10,000 in sugar contract case where actual loss was $28,000 *held* unreasonable, 101 C 265
——unless deposit made as agreed claim of liquidated damages will not lie, 101 C 265
——agreement for forfeiture of deposit made as liquidated damages and for payment of certain sum as such damages distinguished, 101 C 277
when provision will be regarded and enforced as one for liquidated damages, 105 C 11
provision in bridge contract for deduction of $50 per day for delay in completion, *held* not applicable in action by city to recover $98,000 which it was obliged to pay another contractor as result of such delay, 105 C 11
designation of sum as liquidated damages does not necessarily make it such rather than a penalty, 125 C 8
——if provision is inserted for purpose of deterring defendant from breaching contract or penalizing him for doing it, instead of specifying sum parties in good faith agreed would be damages, it is a penalty, 125 C 9
——in such case recovery limited to actual damage and if no damage no recovery can be had, 125 C 9

§ 19. Averments as to Damages; Special Damages

judgment for greater sum than demanded *held* error, 5 D 339
no allegation of special damage necessary where law implies damage, 1 C 317
——special damages not averred cannot be proved, 1 C 317, 60 C 61
in trespass de bonis asportatis damages limited to value alleged, 7 C 278
a pro tanto recovery where part only of allegations are proved, allowable when, 14 C 107
damages presumed from wrong complained of need not be pleaded, 24 C 404
"and was prevented from attending ordinary business," 43 C 46, 565
——loss of earnings in special employment *held* inadmissible, 43 C 46, 567
special damage defined, 43 C 567
special damages, to be recovered, must be distinctly averred, 43 C 567, 60 C 61
to recover treble damages, quaere whether statute permitting must be referred to in complaint, 59 C 8
value of a sidewalk destroyed by a change of grade is recoverable under statute as special damages, 62 C 459, 63 C 433
complaint for conversion; plaintiff cannot recover damages for injury prior to conversion, 63 C 486
where facts show special damages, they need not be so called, 66 C 413
averments necessary to obtain treble damages for breach of law of road, 66 C 570, 75 C 124, 84 C 47, 87 C 253, 93 C 247
loss of beneficial use of stream by diversion to be pleaded, 71 C 442
loss of earning power, 73 C 425, 694, 79 C 189
damages can only be given secundum allegata, 73 C 682, 74 C 46
special damages must be specially alleged, 73 C 694, 74 C 544, 75 C 476, 77 C 699
failure of lessor to deliver possession of premises; special damages, 75 C 476
claim for damage can only be denied by denying facts alleged; but demurrer may lie, 76 C 194

vindictive damages only recoverable for act of servant where malice of principal is alleged, 76 C 355
under allegations of loss of eye and arm what may be proved, 77 C 116
so where injuries to leg, side, etc., are alleged, 77 C 305
damage due to rise in value of stock wrongfully sold by broker to be specially alleged, 77 C 517
what are special damages, 77 C 527, 699
cutting shade trees as special damage, 77 C 699
expense of medical treatment, 79 C 189
where damage implied by law general averment sufficient, 79 C 189
effect of allegation of inability to attend to ordinary business, 79 C 189
loss of business must be specially alleged, 82 C 258, 84 C 120
on appeal from commissioners, statement of claim takes place of ad damnum, 83 C 35
loss of earnings, if alleged, are admissible and must be considered, 83 C 175
improper elements of damage are attacked by motion to expunge, 84 C 111
special damages must be specially pleaded, 84 C 120, 85 C 360
under general allegation of incapacity from bite of dog plaintiff's incapacity from carrying on his usual business may be considered, 84 C 117
under general allegation, damages that are necessary and direct result of the wrongful act can be recovered, 84 C 117
in case of forfeiture for failure to perform contract in time agreed upon, 85 C 363
allegation of facts on which special damages are founded dispenses with necessity of referring to them in per quod clause, 87 C 75
special damages are not the necessary result of the wrong, but the natural consequence, 87 C 75, 94 C 481
where complaint shows damages arising subsequently, they may be claimed, 87 C 165
cost of moving in and out of premises because of a prior lease recoverable as special damages, 87 C 165
judge cannot award double or treble damages unless complaint calls for it, 87 C 253
complaint alleging pain and suffering and death is not inconsistent; recovery may be had on both or either, 87 C 301
special damages under the Sales Act must be alleged, 88 C 109
special damages not recoverable if evidence shows no basis beyond a guess, 88 C 619
allegation that injury is of a continuing nature, permits recovery after date of commencing action, 88 C 710
if alleged and proved, recovery can be had for inability to attend to ordinary vocation including profits reasonably probable, 89 C 697
allegation that A was prevented from transacting ordinary business no basis for special damages nor for per diem value of services, 91 C 339
if complaint alleges other causes of injury for violation of rules of the road than those necessary for treble damages, latter cannot be recovered under general verdict, 93 C 247
special damages in changing grade of highway, 94 C 149
loss of use of truck not special damages in action for wrongful detention, 94 C 481
whether a judgment allowing special damages, not alleged, erroneous, quaere, 94 C 481
going to trial on general allegation as barring right to object to evidence of damage on ground that no notice of the claim is given, 94 C 484, 97 C 594
inability to follow one's usual vocation provable although no allegation of special damages, 94 C 481
proof of loss in some special pursuit yielding a pecuniary reward is not admissible if no special damages alleged, 94 C 481, 485
test to determine what damages should be specially pleaded, 95 C 692, 97 C 594
pleadings must afford basis for award of exemplary damages, 96 C 693
allowance of amendment as to special damages, three weeks after trial, is discretionary with court, 97 C 447
in action for nondelivery of goods sold, loss of profits, loss to plaintiff's business, and loss in purchasing other goods are special damages to be alleged, 97 C 447
allegation of necessity for hospital treatment and medical attention for which money spent and must be spent supports proof of expenditures made, 97 C 593
——especially where allegation denied, without motion for more specific statement, 97 C 593
if special damages improperly claimed before committee objection should be made to evidence to show them, 98 C 560
allegation that plaintiff prevented from following his regular occupation as policeman permits recovery for time lost or loss of earning capacity, 98 C 606
allegation and proof of special damages, when required in slander action, 98 C 793
allegations sufficient in complaint by original contractor against subcontractor who agrees that on default former may perform and recover excess cost and sums spent to remove liens, 98 C 801
general allegation sufficient in absence of motion, 98 C 803
allegations of counterclaim *held* to put defendant's damages in issue, 101 C 416

injuries to teeth admissible under allegation of injuries "about head and face," 101 C 545

general and special damages defined, 104 C 508

cessation of menstruation as result of personal injury must be specially pleaded, 104 C 508

evidence of special damage, though not pleaded, is admissible to characterize injuries generally alleged, 104 C 508

in libel affecting lawyer in practice, evidence as to general loss of business admissible without special plea, 106 C 128

——but not loss of particular client, 106 C 128

ordinarily, special damages not recoverable without proof of them by evidence, 106 C 312

special damages defined; when allegations necessary, 106 C 475

general allegation of irreparable damage must be supported by specification of facts, 106 C 475

"displacement of facial features" broad enough to include crossed eyes, 106 C 725

statements slanderous per se support substantial damages without proof of special damage, 107 C 122

special and peculiar value to the owner, not represented in market value, when recoverable, 108 C 359

damages for destruction of greenhouse constitute special damages and must be so alleged in suit for injunction, 109 C 693

recovery in action for breach of promise to marry for failure to reconvey property conveyed to defendant, would be one for special damages, 110 C 438

——would need special plea, 110 C 438

though special damages alleged were remote, jury might have found them within contemplation of parties, 114 C 614

loss of use of land to plaintiff for purpose of garden by washing of dirt from defendant's land was special damage, 115 C 724

——loss measured by vegetables he was required to buy, 115 C 724

$1000 "as the minimum cost" of employment of housekeeping aid to injured married woman sustained though uncertain, 118 C 363

if recovery is sought for consequences which do not necessarily and immediately flow from injury, damages are special and cannot be recovered unless alleged, 118 C 431

——but allegations definite enough to apprise adverse party of probable evidence and enable him to prepare defense, sufficient, 118 C 431

——so allegations of injuries to brain and loss of brain function sufficient to support evidence of probability of epileptic seizures, 118 C 431

in action for trespass to person, plaintiff entitled to such special damages as are alleged and proven to have proximately resulted, 119 C 492

damages resulting from loss of earning power are special and must be pleaded, 119 C 591

——allegation that plaintiff was prevented from following his ordinary business merely characterizes extent of injury; does not give notice of claim for loss of earning power, 119 C 591

——but allegation of nature of plaintiff's trade or business, and of effect of personal injury on ability to continue it, sufficiently apprises defendant of claim, 119 C 591

——and in absence of motion for more specific statement, plaintiff not bound to allege extent of loss or precise manner in which it occurred, 119 C 591

in suit for services rendered decedent, where claim filed with administrator apportioned total amount among three items of service, recovery not limited on each item to amount specifically apportioned to it, 124 C 50

failure to secure rebate on liquor license due to delay in disposing of stock was special damage which had to be specially pleaded, 126 C 506

§ 20. Evidence

§ 21. ——In General

strict proof of damages required when demand is stale, 3 D 289

jury cannot conjecture; party must prove his damage, 29 C 124

plaintiff must prove by preponderance of evidence extent of damage; cannot be determined by guess or speculation, 86 C 9

where evidence is admitted, it is assumed to have affected the estimate of damages, 91 C 339

going to trial on general allegation as barring right to object to evidence of general damage, 94 C 484

if special damages improperly claimed before committee objection should be made to evidence to show them, 98 C 560

damages must be established by direct evidence; cannot be surmised or conjectured, 102 C 61

if erroneous evidence of damage could not substantially affect amount of verdict, it will not be set aside, 106 C 127

in contract action damages must be proved with all certainty reasonably possible, 112 C 385

——but exactness not required if not reasonably possible, 112 C 385

——cost of shipment of goods dependent on weight which could not be exactly shown, 112 C 395

statement that plaintiff has spent "possibly around $160 or $170," too indefinite to justify award, 112 C 646
loss of business need not be proved in dollars and cents; reasonable certainty, sound discretion of jury, 113 C 145
plaintiff must not only prove case, but must prove damages to be entitled to verdict, 113 C 442
where connection of injury with acts alleged can only be established by expert testimony, lacking that verdict cannot stand, 116 C 17
damages are essential element of plaintiff's proof before he can recover; must be proved with reasonable certainty, 125 C 10
to recover, plaintiff has burden of proving damages, 125 C 47
to permit damages for loss of profits, evidence of such certainty as nature of case permits should be produced, 126 C 597
——fact that damages are difficult of ascertainment does not prevent their recovery, 126 C 600

§ 22. ——Personal Injuries and Death

person injured may testify de injury and corporal pain and suffering, 25 C 97
evidence as to loss of earning power from personal injury, 73 C 424
evidence of pain suffered even during trial admissible, 74 C 475
in damages for nervous shock from injury, inquiry may be had as to previous physical condition due to morphine and alcohol, 82 C 540
loss of earnings considered though evidence is indefinite, 83 C 175
feeling of deceased towards relatives may be shown to affect damages recoverable by his death, 87 C 328
evidence of distress from inability to see sick wife is inadmissible on question of husband's damages, 89 C 405
that since injury plaintiff has been living with relatives at their expense admissible to show inability to follow her calling, 96 C 582
payments made to plaintiff by a third party not regarded, on whatever motive made, 97 C 283
since payments to plaintiff by third persons are immaterial, evidence of insurance against hospital bills is inadmissible, 97 C 283
hospital charges admissible in personal injury action, 97 C 287
evidence of wages lost proper element in determining impairment of earning capacity, 98 C 605
causal connection between injury and physical condition cannot be left to surmise, 99 C 677
——that cancer resulted from injury, 99 C 677
——in such a case conclusion can only be based on expert opinion, 99 C 679
evidence that plaintiff's engagement of marriage was broken off as a result of her injuries, *held* inadmissible, 100 C 77
in action for wrongful death that deceased sent money abroad for parents admissible to show earning power, 100 C 602
evidence of earning power before injury proper upon issue of loss of earning capacity during period following injury, 100 C 612
——but does not fix damages where evidence shows injured party could still earn something, 100 C 612
evidence of plaintiff's profits from ice business prior to injury, 100 C 612
——relevant, but not conclusive, on issue of loss of earnings, 100 C 612
substantial payments made for medical and hospital bills as indicating seriousness of injuries, 103 C 584
——receipted bill as corroboratory evidence of payments, 103 C 584
testimony that doctor might charge "an ordinary fee of $200 or $300" too vague as basis of recovery, 103 C 584
evidence of special damage, though not pleaded, is admissible to characterize injuries generally alleged, 104 C 508
that wife obliged to work to meet expenses of husband's injuries inadmissible to prove their extent or as special damages, 105 C 625
where injuries are permanent, expectancy of life is relevant consideration; how proved, 106 C 302
loss of future earning capacity of child of tender years recoverable by father without definite proof or evidence; largely a matter of speculation and conjecture, 106 C 310
under allegations of nervous shock, excessive menstruation followed by cessation admissible to characterize injury, 107 C 23
——but evidence that this would result in inability to bear children inadmissible, 107 C 23
——error in admission not cured by charge that it was to be regarded merely as symptom, 107 C 23
allegations of ecchymosis, soreness, lameness, nervous hypertension and shock not basis for admitting evidence as to injury to sciatic nerve, 107 C 27
where evidence was plaintiff not suffering from heart disease three or four months before injury and performed hard labor the day it happened, conclusion that injury caused disease sustained, 107 C 202
where plaintiff claimed shock of finding broken glass in bottle of medicine caused re-

turn of rheumatic fever and claim was only for that physical injury, *held* evidence did not support recovery, 109 C 350

——claim of causation between discovery of glass and return of fever not proved, 109 C 350

where there is permanent disability, mortality tables not exclusive or necessary evidence of life expectancy, 114 C 64

plaintiff's medical testimony sufficient to justify jury in concluding that hemorrhages were caused by accident, 114 C 652

burden of proof; plaintiff must show such facts as remove causal connection between accident and injuries suffered from realm of speculation and afford logical basis for the inferences claimed, 114 C 657

opinion evidence of reasonableness of medical charges not conclusive upon jury, 115 C 457

evidence that plaintiff as result of injury to jaw was fed through tube fairly within scope of injuries alleged, 116 C 549

certainty of proof required where possible; where not, the best approximation, 120 C 603

mortality table not the exclusive evidence admissible to establish expectancy of life, since age, health, habits and physical conditions are factors, 125 C 449

§ 23. ——Value

market price at Middletown *held* admissible to show price at Hartford; coupled with the proof that they were usually the same, 15 C 260

value of services in negotiating a sale; broker may testify what he could charge, 41 C 180

assumpsit for services as a trained nurse; defendant cannot show what others, not nurses, would have rendered the services for, 49 C 281

——nor what a "competent man" could have been secured for, 49 C 281

——such evidence would not determine the value of the skilled services of the plaintiff, 49 C 282

——such services are entitled to adequate compensation, though less experience would have answered, 49 C 282

evidence of defendant as to value of engine, *held* inadmissible to show the probability as to what the real contract was, 49 C 575

——the issue being not the terms of a sale, but the value of the use of the engine, 49 C 575

——authorities de evidence of market value of the thing sold do not apply, 49 C 575

expert evidence of value of carriage *held* admissible, 51 C 202

rental value of real estate is competent evidence as to its value, 54 C 34

——expert may give his opinion as to rental value, 54 C 34

——ordinarily actual rents received less expenses would be more satisfactory, 54 C 34

evidence that buildings standing could be reproduced for certain sum, *held* admissible as to value of buildings, 54 C 34

capacity of mill in reduced state of stream a proper inquiry in assessment of, 56 C 463

——profits of mill in one of the years since water was diverted is admissible, 56 C 463

——also rental value of mill before and after such diversion, 56 C 464

value of debtor's interest in property attached is presumed to be the actual value of the property, 58 C 436

——so in suit on bond substituted for the property attached, 58 C 436

——but obligor may reduce this value by proving only a qualified or partial interest in debtor, 58 C 436

evidence as to value of use of tools in performing a written contract, inadmissible except on theory contract has been abandoned, 59 C 562

——and only as pertaining to value of plaintiff's services, 59 C 562

tax list inadmissible to prove value of property injured by railroad fires, 62 C 343

tax list *held* inadmissible to prove value in suit between other parties, 62 C 343

claim that certain articles taken were substantially new; evidence as to the value of new articles of similar kind *held* admissible, 62 C 557

the price fixed by owner of land, since deceased, is admissible to show value for taxing purposes, 63 C 24

"actual value," "market value" or "market price," applied to any article means the same thing, 63 C 493

evidence of price of goods sold at auction admissible to prove fair actual value, 63 C 493

value of services, how determined, 64 C 464

difference in value of planted and unplanted oyster bed not admissible to prove damage for breach of agreement to furnish set, 68 C 235

on action to recover for services as manager of a corporation, evidence of increase in business is too remote, 72 C 140

——not so, length of service in that business, 72 C 131

time plaintiff worked and evidence that he could not have completed job in less time, proper to prove value of services, 75 C 716

debts incurred in performing work not evidence of its value, 80 C 378

expert evidence as to reasonable worth of work admissible, 85 C 486

for conversion of household furniture, market value of second hand goods not admissible, 86 C 264

where rental value of farm in issue, what is considered, 87 C 168

one who deals in automobiles can give opinion as to amount of damages, 89 C 326

value of services need not be established by direct evidence but may be inferred from circumstances, 90 C 625

not proper to leave to jurymen the duty of measuring value according to their individual experience, without giving them evidence as a basis, 96 C 341

——such damage would be conjectural and speculative, 96 C 341

on refusal to deliver goods to be manufactured, prices of like goods sold as evidence of market value, 98 C 560

whether price secured at sale of articles converted is too remote as evidence of value at time of conversion is question in discretion of court, 99 C 586

where cost of article four years before accident and amount for which it sold after accident is all evidence, verdict would be surmise or guess as to value near time of accident, 100 C 612

where property has no market value and value to owner is considered, sentimental value disregarded, 106 C 423

——beneficial use of the property to be considered, 106 C 423

——destruction of woodland purchased for use in connection with a school, 106 C 423

market value of goods lost, is price for which they are bought and sold at place of loss or nearest available market, 106 C 552

——best established by actual sales, 106 C 552

——but plaintiff *held* in no position to complain of use of price at which plaintiff, a retailer, bought them at wholesale, 106 C 552

measure of damages for fraud in sale of goods; market value admissible but not controlling, 108 C 511

difference in value may be proved by market value or by difference in depreciation, 108 C 511

in determining value, evidence of market value is admissible, but is neither exclusive nor conclusive to prove it, 108 C 514

limited opportunity to sell intoxicating liquors as affecting value in determining damage for loss, 108 C 669

——defendant *held* entitled to charge that jury could not resort to speculation, surmise or conjecture, 108 C 669

when evidence of cost is admissible to prove value; discretion of court, 113 C 97

misrepresentation of year of manufacture of automobile; opinion of value based on manual and witnesses' own experience, 114 C 719

proof of expenses paid or incurred for medical services sufficient without proof of reasonableness of charges, 115 C 457

price paid for property claimed to have been fraudulently represented is evidence of its value if it had been as represented, 119 C 578

proof of value of services rendered decedent, 120 C 600

——that plaintiff kept no accounts does not necessarily preclude her from recovering, 120 C 604

——amount promised to be left by will in compensation is of no weight in determining reasonable value, 120 C 600

——and where there was expert testimony, but court obviously based its judgment on promise by decedent to leave property to plaintiff, new trial was ordered, 120 C 600

plaintiff *held* not to have proved reasonable value of services rendered, 125 C 10

opinion of experts as to value of legal services not binding in court, which could use its general knowledge as to reasonableness, 126 C 154

evdience of opinion of qualified witness as to value of good will of a business accepted where it is only available evidence, 126 C 601

§ 24. ——Miscellaneous Cases

note for $250 payable in cloth at 30 cents per yard; evidence of value of cloth per yard at maturity inadmissible, 3 C 60

knowledge of community that horse had run away admissible when, 42 C 310

engineer experienced in making plans and estimates for bridges may testify as to the probable cost, 50 C 248

——though he has no experience as a practical bridge builder, 50 C 248

——immaterial that he obtained prices of materials from dealers, 50 C 248

all circumstances attending an assault are admissible to enhance damages; though complaint demands general damages only, 60 C 62

on claim for damage from not being able to sub-let tenement, plaintiff not restricted to actual applications for premises, 64 C 556

on counterclaim, joining claims in tort with claims in contract, defendant bound to prove entire damages, 64 C 563

in suit for malicious prosecution, evidence of voluntary surrender to the arrest admissible, 69 C 512

evidence as to judgment which might have been obtained in action against officer for

negligence in permitting escape, and in not returning process, 70 C 143

in action for destruction of property, evidence that it would have been lost in any case, inadmissible, 70 C 563

in suit on replevin bond for nonreturn of goods on withdrawal of action against surety, he may show title in principal, 70 C 605, 71 C 698, 74 C 175

in action for fraud in representing goods, right to manufacture which is sold, to be a success, evidence admissible that loss was due to bad manufacture by plaintiff, 71 C 1

statute permitting evidence, in action founded on contract, of damages accruing from same cause of action subsequent to bringing suit has no application to an independent cause of action, 71 C 425

reasonableness of surgeon's charge affected by conditions in which services are performed, 72 C 396

damage by sewage; cost of removal is relevant, 72 C 562

precise damages from change of grade and cutting shade trees need not be proved by witnesses; jury may determine from inspection and maps, 73 C 359

in action on attachment bond, proof of want of ownership of property by defendant is admissible, 74 C 170

proper cost of repairing damage from change in grade as evidence of that damage, 76 C 279

loss of custom as evidence of damage from conspiracy, 77 C 228

where breach of agreement by tenant renders it impossible to continue bakery in building, cost of installing oven and readiness of others to lease building admissible, 80 C 192

in action for value of goods delivered as part of price of other goods to be furnished by defendant but never sent, fact that nominal price to be paid for latter included sum agreed to be due defendant on mutual rescission of former contract is admissible, 81 C 343

where evidence as to one item of unliquidated damages supported judgment but court based judgment on all items, some not being proved, there was error, 85 C 212

if all evidence of cost of improvement rejected, error for court to estimate damages, 85 C 212

——those depending on contingency which may not happen are not allowable, 85 C 364

contract to buy land jointly, build on it and share profits; evidence of accrued profits not conclusive as to future profits but future profits can be shown if reasonably certain, 86 C 453

repudiation of contract to sell goods to be manufactured on percentage basis; actual proof of amount which would have been sold, unnecessary, 86 C 494

evidence of rental value of automobile and wages of chauffeur admissible to show extent of injury, 88 C 590

damages for failure to complete pleasure boat on time are such as might be reasonably anticipated; evidence of rental price of similar boats admitted, 89 C 51

establishment of a picnic ground on a public watershed after notice admissible as affecting damages, 90 C 171

cost of repairing automobile as evidence of damage, 93 C 454

expenditures actually made are evidence of their reasonableness, 94 C 683

it has not been customary to offer evidence of actual expenses of litigation in slander and libel, 95 C 482

——but it is proper and preferable to do so, 95 C 482

evidence proper in action for conversion of notes, to show that they were not actually worth their face value, 96 C 233

——burden of proof is on defendant, 96 C 238

computations made from annuity tables admitted in evidence without objection may be used, 96 C 472

allegations and proof in slander action, 98 C 793

rental value as evidence of amount to be charged against administrator for failure in duty to rent premises, 103 C 236

evidence too problematical where basis would be failure to keep contract with town to improve road in certain way where it was not, and only possibly might become a highway, 106 C 39

in libel affecting lawyer in practice, evidence as to general loss of business admissible without special plea, 106 C 128

——but not loss of particular client, 106 C 128

bill of repairs to automobile is not admissible to prove damages for injury without supporting evidence, 106 C 255

on agreement to exchange lands judgment for $5000 for plaintiff sustained by proof that equity in property he was to get was worth that sum, 108 C 465

loss of use of automobile; damages how proved, 108 C 524

loss of profits how proved, 108 C 549

where resale after breach of contract of purchase is not within reasonable time, price furnishes no evidence of damage suffered; must be definite and certain, 108 C 605

loss of use of automobile, 108 C 738

——evidence *held* sufficient to show allowance made for depreciation, 108 C 739

in determining damages for loss of use of car, services of driver not considered where it was not element in the case, 114 C 78

burden on defendant in suit for alienation of affections to show lack of affection, separation of parties and the like in mitigation of damages, 114 C 478
punitive damages in suit for alienation of affections; evidence of costs of suit unnecessary though better practice, 114 C 478
where no evidence that veterinarian made charge for services or their value, allowance of item improper, 117 C 510
——distinguished from case where there was evidence of charges made by physicians and it was held unnecessary to offer evidence of their reasonableness, 117 C 513
in action for false representations, plaintiff cannot recover profits which might have been realized if he had not been deceived, unless there is evidence by which such profits can be measured with reasonable certainty, 119 C 578
suit upon policy insuring against "collision or upset," where flame in cab caused driver to swerve from road, car went down steep bank, crashed at bottom and was consumed by fire, 120 C 296
——burden on plaintiff to prove he suffered loss by reason of damage by the collision, 120 C 301
——and also to prove amount of the damage done by collision or upset, 120 C 302
——whether plaintiff must prove that a certain portion of damage resulted from each of the two causes, flame and upset, 120 C 302
——since court found that ignition of gas in tanks was caused by upset and only reasonable conclusion was that such damage as was caused by fire was result of such ignition, the upset was "predominantly efficient cause" of the whole damage, 120 C 296
——situation not entirely like that in torts; usual principles of causation should not be so closely applied as to defeat intent of parties, 120 C 303
——and rule requiring plaintiff to segregate damage due to a particular peril insured against where entire loss is due to two causes operating independently, not applicable, 120 C 296
reputation of plaintiff relevant on question of damages in action of malicious prosecution, 124 C 310
——but question of character of plaintiff not properly worded, 124 C 310
estimate of plaintiff's loss of profits on refreshment concession due to defendant's breach of contract was pure guess and unsupported as to either amount of business loss or profit to be expected, 126 C 602
testimony by plaintiff that doctor advised operation, not equivalent of testimony by doctor that operation reasonably necessary; insufficient basis to predicate liability for cost of such operation, 127 C 465
charge that plaintiff had burden of proving all material allegations *held* sufficiently applied to proof of damages, 129 C 122

DAMNUM ABSQUE INJURIA

See Damages

DANGEROUS INSTRUMENTALITIES

See Negligence § 7; Nuisance

DATE

See Time

DEATH

See also Death by Wrongful Act

judgment, when party dies pending motion for new trial, 15 C 423
control of the body, 81 C 598
death of judge before filing finding warrants motion for new trial; instead, however, resort may be had to writ of error or appeal, 87 C 608
civil action not abated by death; continued against executor even if estate is insolvent, 88 C 100
does not under our statute dissolve attachment, 90 C 323
presumption from seven years absence, 108 C 271

——statute de probating of estate of one seven years absent has no general application, 108 C 271
——nature of presumption, 108 C 271
——in action on insurance policy, *held* that facts as to inquiry by wife, who was beneficiary, were sufficient to give rise to presumption, 108 C 271
death of party after hearing by Probate Court, but before decision, does not make that decision void, 110 C 646
——attorney for party cannot prosecute appeal, but it survives to executor or administrator, 110 C 646
——attempted appeal by attorney was a nullity, 110 C 649
judgment in an action begun and prosecuted against a defendant who is dead when it was begun is void and may be collaterally attacked, 117 C 39
where one defendant died pending appeal and no representative entered, award could not affect his estate, 121 C 640
——but as liability was several and award fixed it on other defendant, it could be sustained as to him, 121 C 640
to give rise to presumption of death arising out of seven years' absence, the circumstances, including diligent search, must justify trier in drawing inference that death was cause of absence, 129 C 394

DEATH BENEFIT

See Beneficiary Associations

DEATH BY WRONGFUL ACT

§ 1. In General; Nature of Action
2. Measure of Damages
3. Pleading and Evidence

See also Actions § 5

§ 1. In General; Nature of Action

action for damages lies in favor of husband against surgeon for unskillfully operating on wife, notwithstanding she dies of operation, 2 R 90
under statute, action for injury to person resulting in death may be brought by administrator, 24 C 575
——can be maintained where death instantaneous, 29 C 496, 30 C 184
no action at common law for death caused by wrongful act, 24 C 577, 25 C 272
action lies against trustee operating road for bondholders, 33 C 237
death of husband and wife by same accident; husband dying before wife; damages for husband's death to wife's representatives, 33 C 434
statute takes away right of administrator to sue for benefit of estate generally, 34 C 57
where person killed in this State domiciled in another State, personal representative appointed in latter State can prosecute suit here, 36 C 213
right of recovery in general, 69 C 284, 72 C 617, 73 C 616, 77 C 111
though death is instantaneous, right survives, 72 C 617, 73 C 617
limitation of actions; failure to have administrator appointed, 77 C 110
negligence of statutory distributees is no defense, 78 C 284
Congress cannot create remedy for injury causing death in a case solely within the jurisdiction of a State, 82 C 352
personal representatives of one killed in another State can sue here, 83 C 278
United States Employers' Liability Act follows Lord Campbell's Act in creating new right of action, 87 C 238
our statute preserves and continues right to sue after death; does not create new remedy, 87 C 301
in assault that caused death, action brought for the assault before death can be continued after death as one action; damages are recoverable for both death and assault, 87 C 301
under statute recovery not limited to death caused by negligence; applies to all cases of death by wrongful act, 87 C 301
Massachusetts statute making recovery depend on degree of culpability not enforceable here, 87 C 461
——overruled, 108 C 387
must allege action is brought within time limit set by statute, 90 C 527, 91 C 395
personal representative has same time as decedent to bring action, and in any event a full year after death, 90 C 611
statute as to accidental failure of a suit applies, 91 C 395

conservator should bring action in name of ward; this right survives to ward's administrator, 91 C 680
caused by negligence; original negligence *held* not superseded by act of another, 98 C 512
action lies to recover for injuries finally resulting in death or for instantaneous death, 99 C 7
statute as to accidental failure of suit applies; after nonsuit, new action may be brought within one year, 102 C 66
history of statutes, 106 C 332
Massachusetts death statute *held* not penal in international sense, and enforceable here, 108 C 386
New York statute enforceable here, 108 C 436
——under it, executor or administrator has peculiar function and may sue here by comity, 108 C 436
nature of action, 108 C 645
——extends recovery to include death as proximate result of injuries, 108 C 645
——hence that heirs-at-law caused death by negligence no defense, 108 C 645
——nature of New York statute, 108 C 648
wrongful death statute does not create new cause of action; it is merely a survival statute, 108 C 645
under acts like Lord Campbell's no right to recover exists unless deceased had right of action immediately before his death, 111 C 200
——if he has settled claim or received satisfaction cause of action is gone, 111 C 200
where nuisance caused injury to son, resulting in death, father could recover medical expenditures and loss of son's services during minority, 115 C 110
——but see 125 C 639
statute allowing damages for death limits recovery to death resulting from negligence or wilful, malicious or felonious acts, 115 C 249
——properly excluded from recovery for breach of implied warranty, 115 C 249
history and nature of action described, 115 C 254
where one defendant's car collided with that of plaintiff's decedent and other defendant's car ran into rear of decedent's, driver of last *held* liable for decedent's death, 115 C 352
employer entitled to judgment for compensation he has become obligated to pay employee's dependents, in suit brought by personal representative of employee against third party for wrongful death, 116 C 91
right of action given by statute was intended for benefit of heirs of decedent, not for decedent's estate in general; save as therein stated claims of creditors excluded from participation, 116 C 95
——rights given are such as survived decedent, and of which he died possessed, 116 C 96
——liability is for all proximate results of injury, including death, 116 C 97
pedestrian overtaken and struck by automobile, while walking on left side of dark road, though there was sidewalk, dressed in dark clothes; verdict for plaintiff sustained, 116 C 150
——and jury's conclusion that defendants had not established negligence of decedent, as required by statute, upheld, 116 C 150
history of statutes concerning survival of causes of action for death due to personal injury reviewed, 122 C 80
——whether action for death due to highway defect falls within statute, "whether caused by the negligence of the defendant or by his willful, malicious or felonious act," quaere, 122 C 80
——in any event it survives by reason of general provision for survival of all causes of action for death due to personal injuries, aside from exception, 122 C 80
rule that if defendant's tort is substantial factor in producing injuries, it matters not that some intervening cause contributed thereto, applies in death action, 125 C 370
common-law rule, generally applicable, is that no action lies for damages resulting from death of human being, 125 C 635
——father not entitled to recover for lost services of son who has been wrongfully killed, 125 C 635
effect of statute in obtaining jurisdiction over nonresident defendant; does not confer jurisdiction over administrator appointed by foreign court, 126 C 92
right of action for death resulting from breach of agreement by doctor to cure patient of disease runs from date of death; such action survives, 127 C 386
cause of action sued upon is not new one created in personal representative or next of kin; is cause which accrued to decedent and survived by reason of statute, 129 C 518
——personal representative has only such rights as had decedent and so could not bring action against latter's unemancipated child, 129 C 518
——for administratrix of deceased father who is also his widow to litigate action for personal injuries against unemancipated son is in itself disruptive of family ties and against public policy, 129 C 524

§ 2. Measure of Damages

damages allowed for brief suffering resulting in death, by statute, 29 C 496
what is ground of damages, under statute, 33 C 51, 61 C 157
——act remedial, not penal, 33 C 237
hearing in damages after demurrer overruled;

plaintiff *held* entitled to $1000 minimum though defendant was not in fact negligent, 33 C 238
evidence of contributory negligence admissible to reduce damages to minimum limit under statute de death caused by railroad; also the exercise of due care by defendant, 36 C 153
damages, 72 C 617, 73 C 614, 75 C 548, 571, 79 C 367
statutory limitation is not a maximum valuation for human life; $5000 not excessive, 85 C 112
no error to fail to charge de limitation of recovery in absence of request, 87 C 149
in assault that caused death, action brought for the assault before death can be continued after death as one action; damages are recoverable for both death and assault, 87 C 301
damages are pecuniary loss to relatives, 87 C 328
damages under United States Employers' Liability Act, 87 C 334
——our law essentially different from United States Employers' Liability Act, 87 C 337
charge de damages considered, 90 C 35
verdict not readily set aside as inadequate, 90 C 35
difficulty of estimating damages; elements considered and evidence admissible, 90 C 35
decedent's estate is entitled to some damages for death alone without considering expectation of life or accumulations, 92 C 678
amount of damages peculiarily a matter for the jury, 95 C 117
charge as to damages approved, 97 C 64
damages for causing death by negligence, peculiarly within province of jury, subject to statutory limit, 99 C 661
that deceased was able to and did send money abroad to parents admissible on issue of earning power, 100 C 602
——charge as to damage approved, 100 C 604
value of life of two and one-half year old child; verdict for $5000 not excessive, 102 C 567
damages recoverable include expenses and losses prior to death, the whole not to exceed statutory limit, 103 C 520
assessment of damages peculiarly difficult, and verdict final unless palpably excessive or inadequate, 106 C 329
statute fixes maximum but leaves minimum open, 106 C 329
——principal, though not only element, is money value of decedent's life to his estate, 106 C 329
——not measured by amount he would have earned or loss to beneficiary by his death but by extent to which estate would have benefited had he lived, 106 C 329
——that deceased earned $42 a week and had life expectancy of twenty-two years, not sufficient to upset verdict of $1000 in absence of any showing as to his expenses, 106 C 329
right of recovery for pain and suffering, loss of wages and hospital bills prior to death, 113 C 405
——funeral expenses, costs of monument and other expenses after death not recoverable, 113 C 405
——verdict for $1000 *held* inadequate, 113 C 405
——nature of damages recoverable, 113 C 407
verdict for $5000 for death of twelve-year-old boy sustained, 115 C 62
——difficulty of determining damages in such a case, 115 C 69
amount of damages necessarily requires consideration of probable duration of deceased's life, 115 C 279
——that no evidence is offered as to this does not prevent court instructing jury as to it, 115 C 279
——court may take judicial notice of mortality tables, 115 C 279
——but they are to be considered in connection with special circumstances of case, 115 C 285
charge in connection with mortality tables failing specifically to instruct jury to take into account probabilities of accident, sickness, etc., *held* not erroneous, 116 C 32
evidence of accumulations by decedent not essential to establish economic value of his life to his estate; important element, however, 117 C 67
measure of damages, subject to statutory limitation, is economic value to estate of life prematurely terminated, 123 C 302

§ 3. Pleading and Evidence

whether declaration by administrator need aver that there is widow or heirs, quaere, 33 C 237
——*held* immaterial on hearing in damages after demurrer overruled, 33 C 237
——existence of widow or heirs must be shown as a fact, 33 C 237
in action against town, plaintiff must show that deceased was in exercise of ordinary care, 63 C 26
presumption that there are heirs, and its effect, 64 C 482, 69 C 272, 71 C 286
stating number and ages of children of deceased of no significance, 86 C 415
under United States Employers' Liability Law the character of relationship between parties is relevant, 87 C 336
presumption as to leaving heirs not applicable; must allege leaving dependents, 87 C 339
difficulty of estimating damages; elements considered and evidence admissible, 90 C 35

decedent, last seen alive shortly before accident, is presumed to have continued alive until that time, 93 C 442
that decedent used due care may be proved by circumstantial evidence, 97 C 99
causing death by negligence; not necessary to count on statute; sufficient if facts alleged clearly bring case within statutory provisions, 99 C 6
where death occurred in New York, amending complaint first brought under Connecticut law to base it on New York law not improper, 108 C 436
plaintiff bound to remove issues of negligence, or contributory negligence, from realm of speculation, 109 C 145
effect of statute creating presumption that person killed by automobile is presumed to have been in the exercise of reasonable care, 116 C 717
where person charged with negligence, as well as plaintiff's decedent, dies as result of accident, 1931 statute did not apply and plaintiff had burden of proving contributory negligence, 117 C 271
under 1931 statute, in actions for negligently causing the death of a person, plaintiff assumes burden of proving defendant negligent and defendant burden of proving contributory negligence of decedent, 117 C 484
statute imposing burden of proof of contributory negligence on defendant in death cases, 118 C 128
——not limited in scope to period immediately incident to time of accident, 118 C 128
——presumption created is available to plaintiff throughout entire period of transaction, 118 C 128
——defendant must prove some negligent act or omission on part of decedent materially contributing to accident, 118 C 128
charge de burden of proving contributory negligence on plaintiff's decedent in death case under statute *held* adequate, 118 C 210
where plaintiff alleged that deceased was in exercise of due care and defendant did not affirmatively plead contributory negligence, charge that burden of proof on issue was upon plaintiff sustained, 118 C 471
statute imposing burden of proof as to contributory negligence upon defendant *held* to apply to pending actions, 118 C 531
statute shifts burden of proof to defendant to produce evidence of contributory negligence, but if, when all evidence in, contributory negligence appears, plaintiff cannot recover, 118 C 531
effect of 1931 statute concerning pleading and burden of proof of contributory negligence in actions where injured party has died discussed and cases reviewed, 119 C 339
——where answer affirmatively alleges contributory negligence burden is on defendant, 119 C 341
——but if on whole case it is proved decedent was negligent, plaintiff cannot recover, 119 C 341
——and where plaintiff by pleading lack of contributory negligence has assumed burden of proof he cannot claim benefit of presumption established by statute, which is not severable, 119 C 339
statute placing burden of proof of contributory negligence on defendant for negligently causing death or negligently injuring person who dies before trial does not apply to actions against municipality for injuries from failure to erect sufficient railing or because of defective road or bridge, 119 C 476
decedent struck in street by car and killed; considering presumption of due care jury's finding that she was not negligent reasonable, 119 C 699
statute de proof of contributory negligence in death cases; burden of proof on issue rests on defendant, 123 C 25, 125 C 534, 128 C 182
——in submitting case to jury where statute applies, court need not specifically refer to it or charge in terms that there is presumption that deceased was in exercise of due care, if it makes clear the effect of statute, 123 C 25
where plaintiff pleaded due care on part of intestate, defendant entitled to charge that he thereby assumed burden of proving it, having waived statute, 126 C 396
contributory negligence of pedestrian, killed by automobile while crossing street, was question of fact for jury, with burden upon plaintiff to prove it, 127 C 297
where driver did not see decedent until after she was struck and there were no eyewitnesses, Supreme Court could not hold as matter of law that driver was negligent, 128 C 455
though no one saw decedent fall on stairway of tenement, jury, drawing proper inferences, could reasonably conclude that fall was due to defect, in view of opinion evidence of builders, 128 C 659

DEBT, ACTION OF

See Andrews and Fowler Digest

DEBTOR AND CREDITOR

See Accord and Satisfaction; Assignment for Benefit of Creditors; Banks and Banking; Bankruptcy; Contribution and Reimbursement; Fraudulent Conveyances; Garnishment; Limitation of Actions; Mortgages; Partnership § 5; Payment; Pledge; Receivers; Release and Discharge; Trusts § 29

DECEIT

See Fraud

DECLARATORY JUDGMENTS

See Judgments § 18

DEDICATION

See also Highways § 5

allegation of facts relied on to prove, *held* sufficient, 57 C 39

——declarations of one who is estopped by his conduct de intention not to dedicate, *held* inadmissible against party claiming, especially in absence of other party, 57 C 41

——declarations of owner de intent not to dedicate, admissible in some cases to rebut presumption of user in accord with owner's intent, 57 C 41

declarations of grantor admissible, independently of deed, to show dedication of park, as against subsequent grantee with knowledge, 57 C 39

see generally, 73 C 578, 78 C 156

dedication by plots, maps, etc., 76 C 295, 77 C 444, 79 C 353

by city to State; capitol park; use of land for soldiers' monument, 76 C 599

is question of fact; acts and deeds as evidence of; so fact that way leads to landing place used by public, 77 C 444

power of railroad to dedicate, 78 C 156

sea beach *held* to have been dedicated, 88 C 8

sand bank *held* dedicated to public by deed from town, 88 C 51

DEEDS

§ 1. In General; Parties
2. Execution and Acknowledgment
3. Delivery and Acceptance
4. Consideration
5. Construction and Effect
6. ——In General
7. ——Interest Conveyed
8. ——Description and Boundaries
9. ——Formal Clauses and Covenants; Incumbrances; Seizin; Warranty
10. ——Special Agreements; Conditions; Covenants
11. ——Restrictions as to Use
12. ——Reservations and Exceptions
13. ——Appurtenances; Easements; Water Rights
14. Validity; Cancellation; Alteration

Note: Cases dealing with the recording of deeds, notice by record, etc. are listed under Land Records

See also Adverse Possession; Boundaries; Cloud on Title; Damages § 5; Easements; Fraud § 4; Fraudulent Conveyances; Infants; Insanity; Mistake; Mortgages; Ouster; Reformation of Instruments § 2; Statute of Frauds § 5; Vendor and Purchaser

§ 1. In General; Parties

deed of greater interest than grantor has passes all he has, 1 R 211, 11 C 557

deed by tax collector of his own land as another's, passes title, 1 R 236

a deed deficient as a feoffment, may operate as covenant to stand seized to uses, 1 C 364

deaf and dumb person has capacity to make, 3 C 303

——what explanation of deed is required in such cases, 3 C 303

administrator's deed must be adapted to convey the estate, 6 C 269

——conveying his interest merely, as by quitclaim is inoperative, 6 C 269

general agent of a manufacturing company is not authorized without a special power to transfer by deed real estate of the company, 7 C 214

conveyance by deed needs no livery of seisin, 16 C 480

husband cannot convey directly to wife, 16 C 482

release or quitclaim as a conveyance is of as much force as a warranty deed, 19 C 476

quitclaim is an alienation within statute de pretended titles, 19 C 476

contract to "sell and convey"; quitclaim passing clear fee is sufficient, 22 C 520

when donee in tail liable upon covenants in a deed of warranty, 23 C 349

deed of permanent building passes land on which it stands, 24 C 229

object of deed is merely to pass title, 26 C 374, 44 C 18, 61 C 482

real contract n pursuance of which deed is given is provable by parol, 26 C 375, 44 C 18, 46 C 585

deed shall operate so far as it can legally, 34 C 427

quitclaim deed is a regular mode of conveyance, 44 C 533, 54 C 62

——immaterial whether releasee has existing estate in possession, 44 C 534

conveyance under a valid contract made before ouster, though grantor afterwards is ousted, is not within statute de pretended titles, 50 C 51

cannot do individually by implied grant what cannot be done by express grant, 51 C 77

capacity of grantor is a question of fact, 51 C 79

can convey nothing even by implication to a stranger to the deed, 54 C 99

one can bind estate only by deed, express or implied, 54 C 100

——so that the record may fairly give notice of true condition of title, 54 C 100

——a distinction exists between a man's binding himself and binding his estate, 54 C 100

a grantor may convey a fee for a perpetual annual rent with forfeiture for nonpayment, 56 C 198

——the law will protect title in the grantee until entry for forfeiture, 56 C 198

——by acceptance and use the grantee is bound to pay rent as by a covenant, 56 C 199

——it is of no significance that conveyance is by deed poll, 56 C 199

not the office of a deed to express contract of sale but to pass title, 61 C 482

parol agreement as part consideration restricting the use of land in some particular, is not merged in deed and does not affect title, 61 C 482

——parol evidence to prove such agreement is admissible, 61 C 482

——where trustee sold land to various purchasers with a parol agreement that no intoxicating liquors should be sold thereon, an injunction restraining purchaser from establishing a saloon *held* properly granted, 61 C 482

nature and effect of quitclaim deed, 65 C 382, 70 C 355

deed as evidence of possession and title, 78 C 107, 80 C 338

grant of rents, issues and profits of, or dominion over, land is grant of land, 81 C 318

parol evidence can show agreement to execute a deed, 81 C 433

an understanding concerning a deed cannot convey a greater interest than that attributed by law, 81 C 539

——it may, however, establish a relationship from which important right may arise, 81 C 539

law implies granting of privileges if within power of the grantor and necessary to the property, 82 C 95

ancient deeds are proof of ancient possession, but those of grantors who had neither title nor possession are not seriously considered, 83 C 386

if grantee gets deed through undue influence, only consideration being promise to care for grantor, a devisee can bring suit without offering to pay for support of grantor, 85 C 567

when grantor's silence concerning premises to be conveyed will give false impression, he must speak the truth, 87 C 491

presumption that grantee knows contents of deed is not conclusive as to grantee's personal liability for a mortgage debt, 87 C 567

deed as instrument carrying out previous agreement, 87 C 572

attorney who drafts deed may be agent of grantor and grantee, 89 C 36

deed as merely clearing title where rights under bond for deed have been surrendered, 90 C 555

ancient deed proves itself when; necessity of showing possession under it, 91 C 265, 270

deed passes title; does not state agreement in pursuance of which it is given, 93 C 61

absolute deed may be shown to be a mortgage, 93 C 61, 96 C 212, 97 C 196

deed is an instrument in writing to convey land, 93 C 520

rule that one cotenant cannot convey distinct part of common estate now modified, 93 C 707

——effective unless inconsistent with rights of co-tenant, 93 C 707

if a deed carries with it a right, a custom corresponding to such right is immaterial, 95 C 317

a deed serves merely to pass title, 97 C 350

——cannot by itself change terms of sale agreed upon, 97 C 350

——hence agreement to convey farm of sixty acres is broken, though grantee accepts deed stating acreage to be forty-five acres, 97 C 350

A's deed to B cannot convey more land than A got by his deed as against adjoining owner where it does not appear that latter's predecessor in title, who bounded on A's land, had been ousted of possession of any land, 102 C 90

quitclaim of farm, to which grantor had supposed title, *held* to convey interest in avails of its improvement, 102 C 409

reference in one deed to another, which cannot be found, does not of itself establish a lost grant of premises referred to, 103 C 332

——title by grant not presumed from use and possession alone, 103 C 332

——but such evidence is admissible as corroboration, 103 C 332

witness not presumed to know contents of document, 104 C 292

when deed of defendant's property is admissible to show that he conveyed it because of consciousness of liability, 107 C 156

statute as to deed of one ousted of possession applied to strip of land beyond fence, claimed to be part of premises conveyed, 109 C 693

"ancient deeds," more than thirty years old, require no proof by testimonial evidence, 112 C 152

constructive possession cannot be claimed of lands not within boundaries of deed under which party claims, 112 C 152

proof and enforcement of oral agreement in pursuance of which deed is given may not be in violation of parol evidence rule; but agreement cannot be enforced if within Statute of Frauds, 113 C 467

P conveyed land to L and the latter agreed orally to build a house on it and that it should revert to P on L's death; *held* apparent absolute estate cannot be reduced to life estate by oral agreement, 113 C 467

——and making of absolute deed not such part performance as to take agreement out of statute, 113 C 467

charge of theft of deed *held* not sustainable under circumstances, 115 C 540

implied grants of land or easements or of any interest in land, allowed in this State, if at all, to much more limited degree than in other States, 117 C 558

ancient deeds more than thirty years old, admissible to prove possession, 118 C 137

——deeds less than thirty years old at time of trial *held* not sufficient to establish ownership, 118 C 137

proper way to prove a deed is by a subscribing witness, 119 C 282

conveyance taken by husband in name of wife; no resulting trust, 121 C 153

§ 2. Execution and Acknowledgment

falsity of certificate of acknowledgment may be shown by parol, 2 R 374

what is essential to the validity of a caveat, 3 D 501

an unacknowledged deed is no evidence of title, 2 C 528

attested by one witness only was not valid in 1672, 3 C 41

——antiquity is evidence of genuineness, not of validity, 3 C 41

an unacknowledged deed is evidence of the character of possession, 3 C 403

——parol evidence of same inadmissible, 3 C 412

acknowledgment must appear on the deed, 3 C 412, 11 C 131

equity relieves, where deed is attested through fraud or mistake by incompetent witness, 4 C 346, 5 C 468, 8 C 549

corporation may by vote without power under corporate seal empower agent to convey its real estate; agent must affix corporate seal to deed, 8 C 191, 27 C 538

"personally appeared and acknowledged, etc., by him signed and sealed," insufficient, 11 C 131, cf. 2 C 528, 30 C 347

——omission of grantor's name cannot be supplied by parol, 11 C 131

invalid, unless grantor subscribe with his own hand his name or mark, 13 C 194

——married woman cannot sign by her husband, 13 C 194
attesting witnesses should be distinterested, 26 C 199
——wife of grantor is incompetent, 26 C 199
——also a stockholder of corporation which is a party, 26 C 200
party is not estopped to deny deed attested by incompetent witness, 26 C 200
deed of land in Connecticut executed in New York before a Connecticut commissioner must be executed and acknowledged according to Connecticut law, 26 C 376
deed executed by one executor, where other has declined to act, *held* valid, 27 C 527
——what must appear on face of such deed, 27 C 528
"personally appeared signer and sealer, etc.," sufficient, 30 C 347
——especially where magistrate is a subscribing witness, 30 C 348
an unsigned deed though acknowledged is void, 44 C 325
——relief to be sought through contract lying back of deed, 44 C 325
under statute, it is sufficient if husband execute deed with wife, 49 C 60
——his name need not appear in body of deed, 49 C 61
testimony of one subscribing witness is prima facie evidence of, 56 C 105
failure of husband to join with wife in execution of a deed from wife to husband *held* a mistake which could be remedied in equity, 59 C 134
signed "F. S. Banks," acknowledged "Frederick S. Banks," *held* of no consequence if persons are the same, 61 C 28
——deed admissible in evidence, 61 C 28
deed executed under apparent power gives color of title, 64 C 475
admission of execution of corporate deed admits what, 74 C 224
effect of deed delivered in blank as respects grantee, quaere, 76 C 497
deed executed and delivered in New York of Connecticut land, 81 C 539
——parties are presumed to have New York law in mind if it would uphold conveyance, 81 C 539
with one witness, invalid, 81 C 541
deed never knowingly executed, without consideration, which grantee never claimed under, will be set aside, 83 C 347
presumption in favor of ancient document permits proof by secondary evidence, 91 C 265
——more than that, it is a presumption of its due execution in fact, 91 C 265
if attested by only one witness, deed is not valid, 105 C 773
effect of validating acts as curing irregularities, 109 C 307
——aimed at specific irregularities, and words "otherwise valid" are understood if not expressed, 109 C 307
——where deed had one witness and no acknowledgment, it was not cured, though one provision of act cured first irregularity and another cured second, 109 C 307
title will not pass under a deed executed by a stockholder of corporation, as such, 114 C 42
requisites of corporate acknowledgment, 120 C 52

§ 3. Delivery and Acceptance

may be delivered to arbitrators to take effect on award, K 64
assent presumed if deed is beneficial, 2 R 27, 5 D 346, 29 C 71
delivery shown by mere possession by heirs of ancient deed, 2 D 280
acceptance is a question of fact for jury, 4 D 400
——presumed, if grantee be incapable of actual assent, 4 D 401
delivery to third person; grantee's acceptance presumed, 5 D 346, 31 C 431
delivery on day different from date may be shown by parol, 2 C 469
entries of town clerk inadmissible to show priority in delivery of two deeds, 4 C 255
title does not pass where deed in escrow put in hands of grantee before performance of condition, 5 C 86
effect of delivery of testamentary deed to depositary, 5 C 320
a written instrument takes effect only by and from delivery, 7 C 503
delivery must be evidenced by some act or expression indicating an intent, 7 C 502
delivery to one not agent of grantee to be by him delivered on condition, vests no title till actual delivery, 14 C 275
whether intended as escrow is a matter of fact, 14 C 276
merely leaving deed with lawyer after its execution is no delivery, when, 17 C 13, 31
every written transfer must be both delivered and accepted, 17 C 520, 18 C 261, 20 C 425
unconditional delivery to third person for grantee's benefit, *held* good, 18 C 261
——grantee's presence not essential, nor his previous authority to third person to receive the deed, 18 C 262
equity compels husband to deliver deed to wife according to promise, 22 C 461
wrongful, fraudulent seizure of deed by grantee of no avail as a delivery, 27 C 314
——not ratified by mere agreement to sell to grantor if to any one, 27 C 314
exchange of lands; possession taken; unreasonable delay in refusing to accept; *held* an acceptance, 27 C 615

——declaration of grantee to counsel that he should refuse to accept inadmissible, 27 C 615
assignment of undelivered executed deed passes no title, 32 C 290
bond never takes effect as a deed without delivery, 34 C 103
——unless conditions of delivery be performed, 34 C 103
bond signed on condition *held* to be escrow, 34 C 103
placing bond in trunk used by both parties for papers, is sufficient delivery, 35 C 163
——especially as obligor so regarded it, 35 C 163
acceptance of deed providing duty is an agreement to perform the duty, 36 C 52
——for breach, assumpsit lies, 42 C 250
agreement as to easement in deed poll *held* binding on grantee by his acceptance of deed, 36 C 302
declarations of deceased grantor that he regarded undelivered deed as a testamentary disposition of part of his estate, inadmissible, 49 C 565
——such declarations could not confer title or give effect to deed, 49 C 565
——nor could they be regarded as part of will unless embodied in it, 49 C 565
delivery by grantor and acceptance by grantee is essential to validity, 49 C 573
——presence of grantee is not necessary to make delivery valid, 49 C 573
——nor his previous authority to a third person to receive it on his behalf, 49 C 573
——nor his subsequent express assent to it, 49 C 573
the law presumes the assent of grantee whenever the deed is beneficial to him, 49 C 573
——although his dissent may be proven, 49 C 573
proof that grantor recorded deed is not conclusive evidence of delivery, 49 C 573
finding that grantor delivered deed for record with intent to pass title to grantee is conclusive against grantor, 49 C 573
conditional delivery; how it must be made, 59 C 574
——to be placed in the hands of a third person until the happening of the event, 59 C 574
——essential that there should be a parting, of possession and all power and control by grantor, 59 C 574
——and for benefit of grantee and at the time of delivery, 59 C 574
conditional delivery, *held* not such as would pass title, 59 C 575
delivery must be in lifetime of grantor, 59 C 574
delivery to third person to hold till specified event which never happens, together with recording, not sufficient delivery, 66 C 579
delivery after grantor's death; intent controls, 66 C 579
delivery in escrow, 74 C 114, 78 C 380
delivery to third person to be handed over after grantor's death; what constitutes delivery; delivery is irrevocable; delivery to grantor's agent not enough, 78 C 380
attestation clause prima facie evidence of delivery, 81 C 539
payment of purchase price by mail and delivery of deed by mail are simultaneous acts, 84 C 178
action for reconveyance lies for deed never delivered but unlawfully taken and recorded, 85 C 661
deed left with attorney pending grantee's performance of condition, not delivered in escrow, 87 C 90
acceptance of a deed in which one assumes a mortgage, not conclusive of his personal obligation, 87 C 567
A conveyed land to B who at once reconveyed to A, *held* recording of first deed shows intent to deliver, 89 C 35
——acceptance of second deed is evidence of delivery of first, 89 C 35
——leaving deed with scrivener to be recorded is legal delivery, 89 C 35
delivery and acceptance are good between parties irrespective of date of record, 89 C 35
——third parties whose rights are not prejudiced can take no advantage thereof, 89 C 35
delivery and acceptance necessary for valid transfer; matter of intention, 89 C 36, 97 C 480
intent is question of fact, 97 C 31
——conclusion of trial court ordinarily final, 97 C 31
——evidence admissible to show, 97 C 31
ratification where, before delivery, grantee took deed from possession of grantor and caused it to be recorded, 97 C 31
execution of deed and leaving it with grantor's lawyer till death not a complete gift, 97 C 480
proof of undisclosed intent to deliver as evidence of actual delivery, 100 C 142
——will not qualify effect of acts actually performed, 100 C 142
to vest title there must be delivery and acceptance and these are questions of fact, 103 C 91
acceptance of deed of servient tract, in which passway is mentioned, constitutes recognition of its existence, 104 C 596
where grantor insisted on grantee's agent keeping deed sent to him and it was not returned for two months, this not acceptance as it was an enforced, not a voluntary custody, 108 C 465

deed not effective until accepted by grantee, 112 C 307
attorney representing both parties and instructed to draw deed had no express authority to accept deed assuming mortgages for grantee, 112 C 307
——where grantee was a broker who had earned commission on sale to grantor, cashing check made in settlement, on assumption he would later own property, does not imply authority in attorney to accept nor does fact that amount of interest was deducted from purchase price, 112 C 307
——nor does leaving deed with attorney after grantee's refusal to accept as latter also represented grantor, 112 C 307
where plaintiff waived defects of execution in deed and lack of agent's authority to deliver it, she ratified delivery and agreement in pursuance of which it is made, 114 C 116
——she could not thereafter claim defendant was holding premises under void deed and recover their value or value of their use, 114 C 116
waiver of defects in execution of deed and ratification of its delivery relate back to time of delivery, 114 C 124
physical possession of executed deed not conclusive proof that it was legally delivered, even when there has been manual delivery; delivery must be made with intent to pass title to be effective, 126 C 391
where there is manual delivery, execution of attestation clause is prima facie proof of delivery; there is rebuttable presumption that grantee assented; can be overcome only by evidence that no delivery intended, 126 C 392
conditional delivery can only be made by placing deed in hands of third person; conditional delivery to grantee vests absolute title in him, 126 C 392
——so if deed was delivered to grantee on condition that it would take effect if grantor died before grantee, condition of no effect, 126 C 395

§ 4. Consideration

See also Fraudulent Conveyances § 4

the consideration expressed is not conclusive on grantor, 1 R 459, 480, 26 C 375
——either as to amount or payment, 1 R 459, 480, 26 C 375
a quitclaim without valuable consideration expressed is good between the parties, 3 C 402
different consideration from that expressed may be shown by parol, 8 C 310
object of consideration clause is only to prevent resulting trust in grantor, 8 C 312, 16 C 387
clause acknowledging payment is only prima facie evidence of amount, 16 C 387
——open to variation by parol, 16 C 387
consideration of covenant to stand seized need not appear on face of deed, 16 C 486
payment of grantor's debts is a valuable consideration for deed, 27 C 430
total want of substantial consideration may make deed void as to creditors, 27 C 430
agreement to support is a valid consideration, 52 C 516
if no consideration, trust will result; stating consideration as "—dollars" sufficient, 64 C 78, 65 C 477
where life tenant gives deed in fee and remainderman accepts part of consideration, deed passes fee, 64 C 536
meritorious consideration sufficient in absence of fraud; if grantor is acting fraudulently, valuable consideration necessary; what constitutes; use of wife's property by husband entitled to it, 78 C 471
real consideration can be shown by parol, 82 C 479, 93 C 66
recital of consideration in deed, prima facie evidence of payment, 84 C 512
——evidence, by plaintiff, of nonpayment permits defendant to show excuses therefor, 84 C 512
——estoppel to take advanatge of failure to pay, 84 C 512
one seeking reconveyance or rescission cannot retain consideration, 85 C 567
——rule not applicable if other party acted in bad faith, 85 C 567
consideration serves to rebut resulting trust, 93 C 66
consideration may be shown by parol, 97 C 196
agreement to give life use of premises to grantor and to support her as consideration, 98 C 355
existence and extent of consideration for deed may be shown, 101 C 603
satisfaction of subscription of decedent good consideration for deed by executor, 109 C 529
proof of entire absence of consideration for purpose of nullifying deed not permissible when it is under seal, 113 C 471
where quitclaim recited valid consideration its effect as legal act cannot be nullified by proof of no actual consideration, 118 C 635
an absolute quitclaim deed expressed to be upon valuable consideration cannot be converted into a conveyance in trust for grantor, by proof of oral agreement to that effect, 121 C 160
no failure of consideration for deed which conveyed interest which grantor agreed to convey, 123 C 137

§ 5. Construction and Effect

See also Evidence § 62

§ 6. ——In General

to society's committee and their successors, conveys title to successors, 2 R 299

deed to two or more without specifying proportion; grantees take equally, 4 D 401

——if one dissents, his share remains in grantor, 4 D 401

condition and situation of parties to be regarded, 5 C 220, 22 C 98

quitclaim deed is a primary and original conveyance, 6 C 269, 19 C 476, 44 C 533, 54 C 62

——as a conveyance is of as much force as a warranty deed, 19 C 476

two deeds to be construed together, when, 9 C 378

least certainty to yield to greater, 11 C 336, 43 C 545, 44 C 24

to husband and wife vests estate in them as joint tenants, 11 C 341

deed should be construed to effectuate the intent, 16 C 486, 43 C 545

mistake in date of prior deed referred to does not affect later deed, 18 C 212

of private grants involving incidental public benefit, should be strict, 21 C 306

what description and accuracy in guardian's deed is sufficient, 25 C 4

testamentary deed with limitation over, 28 C 451

——rules de title by devise *held* inapplicable, 28 C 452

if doubtful, words to be construed most strongly against grantor, 31 C 157

——though given under an award, 31 C 157

a deed shall operate so far as it legally can, 34 C 427

repugnancy in, discussed, 52 C 514

where grant and condition are impossible together, the grant stands, 52 C 515

both parties must accept and are equally bound by the true interpretation of deed, 54 C 56

ordinarily the meaning of a written instrument is gathered from the language used, 54 C 62

——court cannot give unambiguous language a different meaning or limit its effect where parties did not mean all the language imports, 54 C 62

secret intention of parties cannot be permitted to vary or change the meaning of a written instrument, 54 C 62

duty of the court to uphold rather than to destroy, 54 C 333

to be construed if possible so as to effectuate the intent of the parties, 61 C 393

in arriving at intention, the situation of the parties and the circumstances attending are always admissible, 61 C 393

——every part of the writing should be considered with the help of that evidence, 61 C 393

two deeds part of one transaction to be construed together, 69 C 117, 72 C 146, 87 C 31

deed to be construed as a whole, 69 C 122

where deed not ambiguous, extrinsic evidence not admissible, 69 C 263

deed in consideration that grantee support grantor to be liberally construed, 69 C 543

deed by remaindermen to children of life tenant who shall be alive at her decease and the issue of any child, etc., construed, 70 C 637

to be construed contra proferentem, 71 C 237, 73 C 238, 247, 80 C 579, 85 C 302

——as in covenant against incumbrances, 73 C 238

deed should be construed to effectuate the intent of the parties, 71 C 242, 73 C 244, 74 C 338, 82 C 567

practical construction of parties admissible, 72 C 565

deed not intended to state agreement, 72 C 719

ambiguity disclosed by parol may be removed by parol; map and evidence of surveyor to identify land, 73 C 530

reference in deed to plan of lots, with places marked "lawn," "avenue," etc., has what effect, 76 C 295

acts of parties and language of deeds as evidence of dedication, 77 C 444

as determined by its terms and surrounding circumstances, 80 C 575, 82 C 567, 85 C 289, 545, 93 C 502, 507, 511

words are to be given their ordinary import, 80 C 575

an understanding concerning a deed cannot convey a greater interest than that attributed by law, 81 C 539

——it may, however, establish a relationship from which important rights may arise, 81 C 539

presumption of ownership to middle of highway, rebuttable, 82 C 567

real character of deed cannot be changed by private agreement made after delivery and record so as to be good against third parties, 85 C 40

where meaning is doubtful, intent of parties is taken from the surrounding circumstances, 85 C 289, 546, 96 C 531

——expressed intent controls; unexpressed intent unavailing, 85 C 289

a particular enumeration followed by general descriptive words is limited to matters of the same general kind unless a contrary intent is shown, 85 C 289

ambiguity cured by discovering parties' intent, 86 C 147

clause assuming mortgage debt prima facie evidence but open to explanation, 87 C 567

provisions authorizing one to remove material under ground, construed as contem-

plating an exclusive use and title to material, 88 C 51
clause as to erecting a fence "between him and me" construed, 89 C 705
language and terms of the whole deed considered in its construction, 91 C 146
all parts are to be read together, 93 C 523
construction of, is function of the court, 100 C 473
——not to be performed by expert witness, 100 C 473
intention of parties is question of fact under all the circumstances, including their conduct, situation and use of property, 102 C 52
nature of property and of the parties claiming title may be considered, 103 C 332
quitclaim deed from mortgagor to mortgagee, *held* not to merge titles where that result prejudicial and not intended, 105 C 169
effect of agreement by grantee to pay any judgment recovered against grantor under existing attachment, 107 C 52
language and terms of whole instrument to be considered, 109 C 539
by executors with reverter to grantors; reverter runs to heirs not executors, 109 C 539
construction to be arrived at in light of situation of property and surrounding circumstances; question of intent one of fact, 113 C 420
deed to agent of defendant and from him to her, read together to determine what mortgages are assumed, 114 C 206
in determining effect of deed, as of written contract, inquiry is not what parties intended but what is intent which is expressed in it, 116 C 440
——if description is clear and unambiguous, that description must be given effect, 116 C 440
deed conveying real estate and tangible personal property but not mentioning good will; such an instrument does not necessarily state agreement of sale on which it is based, 127 C 704

§ 7. ——Interest Conveyed

deed of a greater interest than grantor has passes what he has, 1 R 211
release passes all right releasor had at the time, 7 C 255, 19 C 476
——operates as conveyance without warranty, 7 C 255
——creates no estoppel as to interest afterwards acquired, 7 C 257
——does not import any right or interest in releasor, 19 C 48
grant not conveying all intended, passes all grantor had power to convey, 10 C 27
release does not extinguish future rights of one having a mere naked possibility, 19 C 111
——even after rights ripen into certainty, 19 C 111
——aliter, in case of contingent remainder, 19 C 111
quitclaim operates to discharge a right, 23 C 171
essentials to enjoyment of grant presumed to be conveyed, 31 C 158, 34 C 47, 36 C 53
deed of fee reserving life estate conveys only a remainder, 35 C 297
general words following specification of particular articles; rule, 46 C 132
——do not enlarge a limited interest, 46 C 132
——but operate to include everything falling within their meaning if interest be general, 46 C 132
provisions of deed construed and *held* a mortgage, 49 C 318
quitclaim, in usual form passes whatever interest the grantor had, 54 C 62
——releases a reservation on condition imposed by an earlier deed to same grantee, 54 C 62
——not limited to a release of mortgage, 54 C 63
construed against grantor; whole interest passes unless words used limit the interest, 54 C 63
of administrator with will annexed duly authorized by power of sale, *held* to release to grantee an estate before held by him on condition, 54 C 64
——administrator may so release, under statute, 54 C 64
conveyance absolute in form regarded as mortgage in equity if given to secure debt, 74 C 252
deed to A for life, then over to his heirs, *held* to give only life estate, 74 C 630
deed to be made effective, if possible; absolute deed construed to pass reversion, 77 C 407
deed of life tenant, who holds remainder in trust, with power of sale, *held* to pass fee, 80 C 459
deed of land to railroad, though describing it as in right of way, and requiring company to build trestle *held* to convey fee, 81 C 466
deed executed and delivered in New York construed under New York law, 81 C 539
deed for life with absolute power of disposal gives fee, 81 C 543
a cotenant's deed cannot convey more than his interest, 83 C 347, 93 C 707
deed to husband and wife makes them joint tenants without right of survivorship, 83 C 581
deed absolute on its face is a mortgage if given to secure debt, 85 C 40, 93 C 61
that the law makes rent incident to the reversion does not mean property is conveyed subject to a lease, 87 C 164

estate tail vests a fee simple in isuse of first donee in tail, 88 C 292

granting use of a spring to A, his heirs and assigns, on payment of a certain sum per annum and other conditions is a qualified base fee, 91 C 146

——owner has only possibility of reverter, 91 C 146

deed absolute on its face can be shown by parol to be given as security, 93 C 61

warranty deed, in light of circumstances, construed as mortgage, 100 C 687

——grantor entitled to reconveyance upon fulfilment of condition, 100 C 687

when conveyance, absolute on face, will be construed as mortgage; intention of parties controls, 107 C 519

deed *held* to have been intended as security and in effect a mortgage and void as ultra vires of trust under which land was held, 114 C 272

where quitclaim deed recited intention to release grantor's half-interest in mortgage it constituted abandonment of debt though note was not indorsed or delivered, 118 C 635

instruments giving only right to mine and remove minerals from land convey no title to minerals while in ground and create no greater interest than incorporeal right to mine with title in minerals after removal, 121 C 43

——whether in given case deed creates fee in minerals under surface or simply incorporeal hereditament determined by intent of parties rather than from deed, 121 C 43

——quitclaim deed of land "intent and purpose" being to convey "all the rock rights and privileges," *held* not to give grantee fee in minerals but merely incumbrance, 121 C 43

finding that agreement was to sell only defeasible term which defendant owned, and not a leasehold to run for thirty-seven years, sustained, 123 C 137

——and conclusion that plaintiffs bought exact interest in land which defendant conveyed in quitclaim deed justified, though plaintiffs were evicted when defendant's lease terminated by breach of covenants, 123 C 137

§ 8. ——Description and Boundaries

metes and bounds control quantity described, 1 R 529, 8 C 25, 44 C 24

known, fixed monuments control courses and distances, 8 C 25, 9 C 452, 15 C 108

metes and bounds include all within them, 8 C 25, 15 C 108

several descriptions; construed so that all are satisfied if possible, 10 C 29

boundary by highway controls courses and distances, 11 C 85

known monuments control boundary by adjoining proprietors, 11 C 336

land bounded by "line of the canal," means by top of canal bank, 18 C 393

deed of permanent building passes ground on which it stands, 24 C 228

an erroneous description added to accurate one is to be rejected, 24 C 229

land held by mortgaged title does not pass under omnibus clause in mortgage deed, 30 C 100

highway as boundary means the apparent, traveled road, 31 C 167

"north fence," treated as north line or as harmless false description, 35 C 427

land passes if sufficiently described though not truly, in all details, 35 C 429

exchange of lands by opposite riparian owners; center of stream is the boundary, 36 C 501

deed of "building and land on which it stands," embraces land covered by foundation walls, 37 C 230

——walls supporting stoop and outside stairs are foundation walls, 37 C 231

where boundary is highway grantee takes fee to center of same, unless contrary intent clearly appears, 37 C 231

money value of deficiency in land sold at price per foot is recoverable, 42 C 74

——assumpsit for land sold will lie, 42 C 75

land bounded by highway; canal; abandonment of canal; conveyance of same land, 43 C 209

——intent of parties to prevail, 43 C 210

construction of distributors' report where measurements are repugnant, 43 C 544

measurements yield to monuments or boundaries when certain or capable of being made so, 43 C 545, 44 C 24

——not an inflexible rule, 43 C 546

covenant of seisin does not apply to quantity if bounded by land of another, 44 C 24

——parol evidence of intent to convey quantity expressed is inadmissible, 44 C 24

office furniture passes under general mortgage of railroad property, 46 C 134

must describe property with what certainty, 49 C 318

——description in trust deed *held* insufficient, 49 C 318

——such insufficiency does not render deed fraudulent, 49 C 318

of specified land and "all such other lands as I own in Salisbury," 49 C 502

——whether description of "other lands," sufficient, quaere, 49 C 506

by metes and bounds of inshore portion of flats lying between upland and low water mark, 50 C 200

——*held*, grantee took right to reclaim and use outer flats, 50 C 203

——where no access to outer flats was reserved, and where no claim to outer flats was made for thirty years *held,* on claim of adverse possession, to embrace outer flats, 50 C 204
——as equivalent to portion conveyed, 50 C 204
inquiry is, what does the description mean and where is the land described situated, 54 C 56
"on the west side of the highway" *held* to mean the apparent highway rather than true line of highway, 54 C 57
of shed with land "covered by the same" limits the conveyance to the land within the exterior lines of shed, 54 C 56
misdescription does not affect if the property is otherwise so described that it can be identified, 54 C 330
——especially so if mistake is as to a certain event in the history of the title, 54 C 332
——such deed needs no correction or reformation by the court, 54 C 337
language of, *held* adapted to convey entire fall of river on grantor's land, 55 C 376
deed of lot referring to map makes map part of deed, 57 C 37
where park was represented on map, declarations that park was to be kept as such, *held* not merged in deed, 57 C 37
the practical construction by parties interested is most significant in case of ambiguous description, 57 C 452
——and is often controlling, 57 C 452
courses and distances in description yield to fixed monuments, 57 C 453
one parcel of land may be a monument to determine boundary and limit of another, 57 C 453
when boundary line cannot pass through all of the known and fixed monuments, some may be disregarded; court may decide which, 57 C 512
later deed fixing line admissible in favor of prior grantee where first deed left boundary uncertain, 58 C 148
in general and ambiguous terms; contemporaneous acts of the parties may be shown to make clear the intent, 59 C 432
mistake in supposing lot described was lot staked out; deed may be reformed, 60 C 185
parol testimony to vary, inadmissible in a court of law, 60 C 186
map on deed may be referred to, though not mentioned in deed, 64 C 86
land will not pass, though necessary to make up acreage named, if not described, 64 C 475
parol statement of grantor cannot enlarge, as against third parties, 65 C 381
acquiescence in line where deed is ambiguous as creating estoppel, 69 C 15
where descriptions conflict, the most certain and material controls, 71 C 237, 93 C 502
subsequent acts of parties as determining bounds, 72 C 147, 73 C 530, 74 C 109, 374, 77 C 577
contemporaneous usage; failure to include in deed land called for by contract of sale, 72 C 480
——long delay in asserting such failure as evidence against it, 72 C 480
monuments control courses and distances; adjoining land, 73 C 530, 79 C 612
——but they must appear in deed, 70 C 303
——so they control reference to another deed, and parol evidence is not admissible as to contrary intent, 73 C 144
tracing of map referred to in deed admissible as secondary evidence, 74 C 379
——but clear description in deed prevails over it, 74 C 338, 76 C 295
meaning of word beach broadened by context and circumstances, 75 C 27
bounding on adjoining land of grantor, "including the wall" on the line; reservation to grantor of right to maintain it, 75 C 115
land of another as monument, 75 C 116
statements on margin of deed referred to as to boundaries cannot effect construction, 76 C 295
bounding on shore, 78 C 119, 88 C 8
bounding on supposititious extension of street below high-water mark, 80 C 186
use of land as determining meaning of terms; "bank lot," 80 C 338
where boundaries are ambiguous, grantee may adopt the most favorable, 80 C 338
bounding land in deed by town on highway laid out by it along high-water line; "beach and highway," 80 C 344
no presumption that bounding on a private way carries to the middle, 82 C 567, 86 C 585, 87 C 31
where way of certain width is reserved, without boundaries, and none exist, description too vague, 85 C 545
ambiguous description construed in light of all surrounding circumstances; question of fact, 86 C 147
boundaries of adjacent pieces admitted to help establish those in question, 86 C 281
boundary on railroad, highway, stream, canal, is presumably to the middle, 86 C 585
no presumption that owner of tide water flats abutting on highway owns to middle, 86 C 659
grantor is bound by recitals in his deed, 87 C 618
——recital that land is bounded by a street estops grantor from asserting the contrary, 87 C 618
when description by reference to land on a nonexisting map too vague, 88 C 548, 90 C 281

beach defined as land between high and low water, 89 C 598

map on file in town clerk's office, referred to in deed, is thereby incorporated, 93 C 502

boundary on tide water ordinarily carries riparian rights unless contrary appears, 93 C 507, 95 C 538

lines and figures are not "courses and distances" within rule which prefers boundaries to them; are boundaries themselves, 93 C 510

deed of one cotenant by metes and bounds is ineffective as against the other, 95 C 619

——but may show adverse possession in grantee who enters under it, 95 C 619

land must be described with reasonable certainty, 97 C 536

known, fixed monuments prevail over designated distances and quantity, 99 C 241

——charge of court de conflicting descriptions *held* sufficient, 99 C 241

boundary by a pond conveys to middle or thread of original stream, 100 C 475

——in absence of manifest contrary intent, 100 C 475

ambiguous description to be interpreted to accord with intention of the parties, 102 C 52

finding as to width of defendant's land in earlier case, no adjudication of boundaries where court there found them to be uncertain, 102 C 53

numerous deeds construed to ascertain boundary between adjoining owners, 102 C 83

contemporaneous deeds construed to harmonize, 102 C 88

in deed of right of way, statement of width as fifteen feet *held* to prevail over monuments which would unreasonably restrict it to two feet, 102 C 663

rule that known monuments prevail over courses and distances is one of construction to carry out presumed intent, 102 C 663

——if latter afford more reasonable and logical results in view of circumstances they will prevail, 102 C 664

——effect of use of words "about" or "more or less" in description, 102 C 663

width of way as stated *held* to prevail over description as "now" bounded by stone and wood fence, 102 C 663

——where it was necessary to accomplish entrance to way, court ordered wall to be moved back and built on the sector of circle having a radius equal to width of way given in deed, 102 C 663

phrase "however otherwise bounded" refers to possible mistakes as to names of adjoining owners, 103 C 285

——cannot exclude way specially mentioned as incumbrance on property, 103 C 285

——so words "now" or "late" and "now or formerly," 103 C 286

claim that deed bounding land "easterly and southerly on highway" included land on opposite side of highway, invalid, 103 C 332

——fence along highway on easterly side of premises *held* to identify boundary, 103 C 332

when property is bounded by highway, it is presumed, in absence of contrary evidence, to refer to apparent, traveled highway, and not as it may exist of record or actual survey, 104 C 36

mutual deeds dividing lot owned in common described land conveyed, "or however otherwise bounded and described as of record may appear" construed, 108 C 538

——map filed almost contemporaneously *held* incorporated, 108 C 538

——this fixed line and also mutual gangway between lands, 108 C 538

——mere recording of map does not charge parties with knowledge of it, but deed must refer to it in some way, 108 C 538

deed not void for uncertainty despite misdescription, where there was no doubt of lot intended to be conveyed, 110 C 374

conclusion of court that sale was of actual quantity within designated boundaries and that statement of acreage was descriptive merely *held* correct, 110 C 546

description in deed, read in light of surrounding circumstances and of other deeds of the grantor of surrounding property, *held* to prevail over grantor's act in pointing out the boundary, 112 C 1

——definitely located adjoining property as a monument, 112 C 1

where boundaries given by adjacent lands, whether one chain of title or another included lot in suit is question of fact, 112 C 11

where boundaries are ambiguous the grantee may adopt that boundary most favorable to him, 112 C 17

distances in deed must give way to a boundary or monument, 112 C 363

grantor conveyed strip on which wall of grantee's building encroached, describing new boundary definitely; deed *held* not to include encroachment of foundation underground beyond this line, 113 C 420

words "more or less" intended to cover slight inaccuracy; when nine inch strip was conveyed, these words not sufficient to support claim for twenty-nine inch strip, 113 C 420

conveyance of land on which east wall of building stood did not include land on which foundation wall, sloping outward, encroached, 113 C 420

boundary clearly described as one hundred thirty-five feet south of street; *held* no room for construction that fence five feet north of line was true boundary, 116 C 440

rule that adjoining property referred to in deed as boundary may be regarded as monument cannot apply to fix boundary where boundary referred to is itself uncertain, 116 C 440
——as where location of latter boundary is very issue between parties, 116 C 440
declaration of previous owner of land in dispute, who dies before trial, as width of avenue distance from which fixed disputed boundary, *held* admissible, 116 C 440
rights of grantee of land bounded on "proposed extension" of avenue, map, not referred to in deed, showing street fifty feet wide, 120 C 511
——mandate requiring proposed extension be restored to original condition erroneous, though construed to apply only to strip left over after street was constructed and deeded to city, 120 C 511
——but plaintiff had right to use all of fifty feet free from obstruction by defendants, 120 C 511
——but defendants not obliged to construct street over entire fifty feet and plaintiff entitled to no damages, 120 C 511
map showing street, but not referred to in deed, not alone sufficient to establish abutting owner's rights in it, 120 C 518
grantor conveying land bounded on street is estopped to deny existence of a street at least sufficient to entitle grantee to a right of way over land so referred to, 120 C 518
——rule applies whether or not street is existent at time of conveyance, 120 C 519
——no covenant implied that street will be made and maintained fit for travel, 120 C 519
deed interpreted as to boundary, 123 C 343
where deed as written was meaningless, court justified in treating error in description as clerical one, 124 C 389
——in dealing with such a situation all surrounding circumstances may be considered, 124 C 389

§ 9. ——Formal Clauses and Covenants; Incumbrances, Seisin, Warranty

declaration on covenant of seisin is good though it also sets out covenant of warranty, 1 R 210
covenant of seisin by one joint tenant to another on partition; lands sold previous to conveyance to joint tenants, *held* not covered by, 1 R 401
release of covenant of warranty by first grantee is of no effect against his grantee, 1 R 499
covenant of seisin in deed by bounds and by quantity extends only to bounds, 1 R 529
action on joint covenant survives against surviving covenantor, 1 R 543
terms "give, grant, bargain and sell" imply what covenants, 2 R 15
eviction is indispensable to breach of covenant of warranty, 2 R 15
declaration on covenant of seisin must show not only that defendant was not seized but also who was, 2 R 15
executor liable on covenant of warranty after final settlement, 2 R 119
habendum may enlarge estate previously granted, 2 R 207, 6 C 292
——cannot lessen or narrow it, 2 R 207
——cannot extend the subject-matter, 6 C 292
deed to A and heirs of her body, habendum to A and her heirs forever passes a fee, 2 R 207
grantee of land bought unincumbered may recover on covenant of title where record of mortgage is fraudulently withheld, 2 R 242
deed describing quantity and referring to deed to grantor; covenant of warranty covers only what grantor previously received, 2 R 253
——grantor liable on covenant against incumbrances if land is incumbered by reservations in deed referred to, 2 R 212
covenant of warranty runs with the land, 3 D 436
trustee liable personally on covenant exceeding his powers, 5 D 92
eviction by elder title without legal process is a breach of covenant of warranty, 5 D 282
covenant of warranty binds heirs as to assets real by descent, 5 D 285
——and administrator as to personal assets, 5 D 285
covenant of seisin and right to convey, if none exists, is broken on delivery of deed, 5 D 424
breach of warranty; intermediate covenantor cannot sue until damnified, 1 C 245
covenants are independent, when, 4 C 10
neither party can sue on covenant without performance where acts are to be concurrent, 4 C 13
no action lies for money to be paid after performance, on covenant, until performance, 4 C 14
decree of foreclosure is no evidence of breach of covenant, when, 4 C 256
covenant of warranty; its meaning and effect, 4 C 492
covenants of seisin and right to convey construed and explained, 4 C 508
——no eviction necessary to constitute breach of same, 4 C 511
——imports a legal seisin, not mere possession, 4 C 513
covenant against incumbrances construed and explained, 4 C 512

covenant of seisin is broken by delivery of a second deed though first deed be unrecorded, 5 C 264
——though such first deed be surrendered, 5 C 264
first grantee can alone sue for breach of covenant of seisin, 5 C 503
——breach is not assignable, 5 C 503, 60 C 192
covenant of seisin is broken on delivery of deed or never, 5 C 503, 6 C 254, 60 C 192
covenant of seisin is a personal one not running with land, 5 C 503, 10 C 433, 60 C 192
covenant against incumbrances is personal and does not run with the land, 5 C 507, 6 C 256, 10 C 433
in action for breach of covenant against incumbrances the specific incumbrance should be alleged, 5 C 509
breach of covenant against incumbrances is not assignable, 5 C 508
covenant for quiet enjoyment is a covenant real, 5 C 517
covenant of warranty is in its nature a covenant real, 5 C 517
——does not extend to hereditaments, 5 C 518
——personal action of covenant broken is now maintainable, 5 C 518
eviction is necessary to breach of covenant of warranty, 5 C 521
easement of third person is a breach of covenant against incumbrances, 5 C 527
definition of covenant real, 6 C 255
covenants to repair and commit no waste are covenants real, 6 C 258
habendum cannot extend the subject matter, 6 C 292
covenant of seisin in mortgage deed *held* valid; broken on delivery of deed, 6 C 384
covenant of seisin in fee is not supported by possession with life estate, 6 C 385
effect of judgment in ejectment when covenantor is cited in, 8 C 308
highway through land conveyed is an "incumbrance"; grantee's knowledge is no defense to action, 10 C 431
covenants of seisin and against incumbrances are not assignable, 10 C 433
person signing and sealing covenant is liable unless expressly excluded, 14 C 251
judgment against grantee, in trespass quaere clausum fregit, is an eviction, when, 14 C 254
——costs sustained by grantee in defending his title are recoverable when, 14 C 254
covenant to stand seized is founded on consideration of blood or marriage, 16 C 485
covenant to keep open a road is actionable by assignee in name of covenantee, 18 C 404
covenantor may be vouched in to defend title, 34 C 195
——if vouched in covenantor is concluded by judgment, 34 C 195
——inapplicable to personal covenants, 34 C 195
mortgagee and warrantor; eviction of grantee; want of notice to warrantor *held* no defense, 34 C 196
covenant to convey with warranty; administrator of covenantor is liable on his probate bond for nonperformance, 38 C 88
incumbrance to be excepted from covenant against, must be accurately stated, 41 C 118, 133
action by covenantee for tax incumbrance; covenantor may show that he had other estate sufficient to pay tax, 42 C 260
deed of ore rights; covenant against incumbrances; right of other cotenants to dig and throw earth on tract conveyed, *held* no breach, 42 C 461
——an inconvenience to which each cotenant must submit, 42 C 462
an attachment on land conveyed *held* an incumbrance, 43 C 129
——though levy be defective, if grantee bona fide pays it before expiration of lien, 43 C 129
no remedy by action of covenant where land is bounded by land of another and grantee is deceived as to place of line, 43 C 288
——remedy is by bill in equity to reform the deed, 43 C 288
liability for breach of seisin and warranty depends on construction of deed, 43 C 288
metes and bounds control as to covenant of seisin de quantity, 44 C 24
covenant of seisin does not apply to quantity stated if bounded by land of another, 44 C 24
construction of independent covenant to maintain wall, 44 C 101
——covenantor must protect and maintain wall so long as dam remains standing, 44 C 101
incumbrance defined, 46 C 510
covenant of warranty operates in futuro and is broken only by eviction, 46 C 510
——eviction may be actual or constructive, 46 C 510
——prior deed to town and acceptance for highway is a breach, 46 C 511
tax not assessed in name of owner or occupant of land, is void in New York and not an incumbrance, 51 C 12
——grantee paying such tax cannot recover of grantor here, 51 C 12
assumption of mortgage debt by grantee; interest overdue does not necessarily make an incumbrance, 51 C 15
——overdue interest follows assumption of mortgage debt ordinarily, 51 C 15
if broken at all it is broken the instant the deed is given, 51 C 204

assessment for sewer if valid is an incumbrance, 51 C 206
covenant of warranty defined; does not necessarily warrant that there is no incumbrance, 58 C 116
a judgment for possession is an eviction, 58 C 117
an exception in covenant against incumbrances does not imply same exception in the warranty covenant, 58 C 117
——when grantor conveyed by warranty deed and subsequently purchased a mortgage excepted in such deed, *held* not entitled to foreclosure and possession, as he had warranted title against all demands, 58 C 116
of warranty and for quiet enjoyment are prospective and run with the land, 60 C 192
——so long as grantor has not a good title there is a continuing breach, 60 C 193
——every assignee may sue all or any prior grantors until he receives satisfaction, 60 C 193
it is an immemorial usage, where warrantor defends or is cited in, to give as damages the value of the land and costs in the action of eviction, 61 C 404
——whether costs includes counsel fees, quaere, 61 C 405
——exceptions to the rule that where grantor agrees to defend it is his duty to defend when he knows the title is attacked, 61 C 406
——grantor may be vouched in or voluntarily undertake defense, 61 C 406
——if grantor fails to defend, then grantee must defend as best he may, 61 C 406
where deed did not include land from which plaintiff was evicted, but the court reformed the deed, *held* defendant, although cited in, could not be regarded as warrantor, 61 C 407
——court could not give such a relation back as to create an obligation of defense on the part of grantor, 61 C 411
——and where court in special case gave as damages the value of the land and costs of eviction, *held* error; value of land alone the amount of damages, 61 C 411
"heirs" absolutely necessary to create an estate of inheritance, 62 C 202
——does not apply to an exception to a grant, 62 C 203
effect of covenant of warranty and against incumbrances, 72 C 245, 75 C 122
existence of easement and party wall as breach of covenant of warranty; injunction as constituting constructive eviction, 75 C 112
nominal damages for breach of covenant of warranty, where incumbrance really helps land, 75 C 112
where A, without title, deeds to B with covenant of warranty, and then gets title and conveys to C, C given priority, 76 C 44
unrecorded building lines not enforceable against innocent purchaser; not a breach of warranty, 85 C 537
lien for sidewalk does not arise until failure to comply with ordinance; until such failure it is not a breach of warranty, 85 C 647
outstanding lease on property conveyed by warranty is a breach of covenant against incumbrances; purchaser may accept tenant and waive breach, 87 C 164
covenant against incumbrances is a personal covenant not running with the land; is broken on delivery of the deed if there is an outstanding term which tenant refuses to surrender, 87 C 165
oral agreement to pay taxes is good defense on warranty against incumbrances, 91 C 651
where two parties exchanged deeds considering the equity equal, neither could sue the other on covenant against incumbrances, 91 C 652
deed containing "heirs, executors, administrators," in beginning not restricted to parties by their later omission, 93 C 519
null and void deed is not an incumbrance so as to violate covenants of warranty and against incumbrances, 93 C 659
——is a cloud on the title but does not impair seisin or right to convey, 93 C 659
covenant of warranty defined, 93 C 662
covenant against incumbrances defined, 93 C 663
when covenants against incumbrances broken, 95 C 470
municipal lien as breach of covenant against incumbrances, 95 C 470
to create an incumbrance there must be a burden with some right, title, or interest which the law will recognize and protect, 95 C 470
award and payment of damages for taking land for street and retaining wall does not give a lien on remaining land so as to violate covenant against incumbrances, 95 C 470
no action lies for breach of warranty unless there has been actual or constructive eviction, 102 C 126
——mere existence of tax lien in absence of efforts to enforce not constructive eviction, 102 C 126
warranty against incumbrances, 107 C 133
——payment of amount of tax lien by grantee prima facie justifies recovery, 107 C 133
——that it was reasonably necessary need not be proved, if fact not controverted, 107 C 133
breach of covenant of warranty requires at least constructive eviction, 109 C 452

——covenant of seisin and warranty are concerned with title and are not broken where grantors had good title, though not perfect of record, 109 C 452

——as where heirs and distributees convey without administration, 109 C 452

——if all except one join in deed and grantee later gets deed from that one, breach of covenant of seisin is technical, 109 C 452

——new trial will not be granted to recover nominal damages for it, 109 C 459

——in such a case no breach of covenant against incumbrances, 109 C 459

burden of proof on plaintiff to prove breach of covenant of seisin and good right to convey, 109 C 459

covenant against incumbrances if broken at all is broken the instant the deed is given, 112 C 191

covenant in deed against incumbrances *held* not broken by assessment and lien for benefits after date of deed, though work was commenced before, 112 C 191

——otherwise if assessment was made before date of deed, 112 C 191

allowance of only nominal damages for breach of covenant against incumbrances upheld, 112 C 689

valid restriction on use of real estate is incumbrance and may constitute breach of covenant against incumbrances 113 C 331, 118 C 180

unexpired lease upon property is breach of covenant against incumbrances, 113 C 331,

word "grant" is descriptive of conveyance of estate in land, 114 C 308

where contract was for sale of entire tract of land free of incumbrances, fact that incumbrance affects only two lots on it does not relieve seller of liability, 115 C 452

right of way for sewer imposing on owner assessments of unknown amount not such unimportant incumbrance that seller can claim substantial performance, 115 C 452

where effect of bond for deed was to furnish title free from incumbrances, fact that it did not specify warranty deed does not relieve seller, 115 C 452

under covenant of warranty, breach occurs only when grantee has been actually or constructively evicted, 123 C 117

——but there is eviction where prior mortgage has been foreclosed and judgment obtained under which mortgagee takes possession, 123 C 117

under both common-law warranty and covenant of warranty, the protection afforded reaches no further than the interest conveyed in deed under which grantee claims, 123 C 117

if grantor sets forth in instrument that he is seized of particular estate which deed purports to convey, or if such seisin is affirmed expressly or impliedly, he and all in privity with him will be estopped to deny he was so seized at time of conveyance, 123 C 117

where terms of covenant are general but only limited title is conveyed, covenant is to be limited to interest actually conveyed, 123 C 117

where mortgage describes land and recites it is subject of mortgage, conveyance is of an equity of redemption and warranty and estoppel under it will go no further than to prevent mortgagor from retaining any interest by subsequent conveyance adverse to that title, 123 C 117

——so where second mortgagee was foreclosed out by first mortgagee and mortgagor subsequently purchased land from first mortgagee, mortgagor is not estopped from asserting title derived by the reconveyance, nor is second mortgage revived, 123 C 117

§ 10. ——Special Agreements; Conditions; Covenants

deed of land for shipyard; conditions; remainder, 3 D 471

absolute performance of express covenant is required; obligation saved if condition becomes afterwards impossible by act of God, 5 C 381

conveyance; reconveyance to be void on fulfillment of contract to support; effect of the transaction, 6 C 345

to create an estate on condition no formal, technical words are necessary, 14 C 96, 23 C 372

grantee of first grantee takes only same conditional interest, 14 C 98

condition in deed that grantee pay $100 is not fulfilled by a set-off, 18 C 540

estate accompanied by trust but not conditional is not forfeited by alienation, 23 C 371

creation of condition must appear from fair construction of the intention, 23 C 372

mere declaration in grant of use to which it is to be appropriated, not a condition, 23 C 372

deed in consideration that wife would bring "no suit, bill, or application for divorce," 37 C 410

——*held* to refer to divorce measures only, 37 C 410

acceptance of deed poll may be sufficient evidence of a promise, 46 C 582

——language of deed should not be doubtful or ambiguous, 46 C 582

——property conveyed "alone to be holden" for payment of debts, 46 C 583

——*held* not a promise to assume debts beyond value of land, 46 C 583

provision that if building costing less than $4000, etc., should be erected, then tract

should at once revert, *held* a condition of title, 54 C 62

——not a mere limitation, restriction or personal covenant, 54 C 62

tender of balance of purchase price is a condition precedent to the right to claim a good title, unless tender is rendered useless by other party, as by absolute refusal to give a deed, 54 C 329

A conveyed to third party, who quitclaimed to A, on condition that he should survive his wife, and to A's wife on condition that she should survive A, 61 C 389

——*held* that conveyance was of use to A and his wife during their joint lives and the remainder in fee to the survivor, 61 C 393

——the intent being to invest in husband and wife an equal and undivided interest, the language was sufficient, 61 C 392

——such a conveyance of a fee is valid as a contingent remainder, 61 C 393

——at common law such a contingent remainder could be effectually released to life tenant of particular estate in possession, 61 C 396

——does not affect that release was through third party, 61 C 396

——where husband and wife were joint life tenants with fee in survivor, *held* entire title vested in wife in absence of all explanation, 61 C 396

specification in deed reserving right to cross railroad tracks and that rails should be kept at a certain level, *held* an agreement to keep rails at that level, 62 C 208

conditions subsequent are not favored; will be construed as covenants if practicable, 62 C 388

——always construed as covenants if doubtful in language, 62 C 388

——are created only by express terms or by clear implication, 62 C 388

——grantors are not entitled to part of compensation paid grantees by city for land, 62 C 391

right of re-entry for breach of, waived by failure to insist on condition for forty-five years, 62 C 388

land conveyed for a cemetery; grantee to maintain fence; obligation of grantee *held* a covenant, 62 C 389

land conveyed for a cemetery only; act of Legislature prohibiting further burials *held* not a breach working forfeiture of defendant's title, 62 C 389

——this exercise of police power destroyed the condition and rendered grantee's title absolute, 62 C 390

——rights of grantor not revived because act gave city the right to take the land for a park, 62 C 390

effect of including in deeds of adjoining lots, made as part of one transaction, grant of land in rear of each for common back yard with prohibition against incumbrances, 69 C 115

clause concerning payment of rent, 72 C 442

where grantee in warranty deed conveys by release to wife of grantor, she is entitled to benefit of covenant, 74 C 617

condition construed to be subsequent rather than precedent; intent controls; condition of support, 74 C 630

re-entry on breach; waiver; pleading performance of conditions of support, 74 C 630

assignee of reversion cannot enter for breach made before assignment; waiver of breach as not waiving condition, 76 C 586

condition of forfeiture on conveyance of, departure from, or sale of liquors on land, upheld, 76 C 598

acceptance of deed containing statement that taxes are assumed is equivalent to a covenant to assume them, 84 C 197

deed, to be void if grantee fails to comply with written agreement of same date, conveys an estate defeasible on condition subsequent, 84 C 512

agreement to nurse and care for person not broken by single unintentional failure, 84 C 512

grantees get no more rights than grantor; estoppel as to him binds them, 84 C 512

power of equity to relieve against breach of condition, 84 C 512

deed to become void if terms of a written agreement are not performed, gives vested estate defeasible upon breach of condition subsequent, 84 C 514

deed, void at option of grantors, can only be so if they do what equity requires, 84 C 515

lease of spring in perpetuity on yearly rental *held* to give qualified or base fee, terminable on breach of condition, 91 C 146

covenant not to erect buildings in front of land to shut off view of water, construed, 93 C 222

covenant not to convey without giving A chance to buy is violated by leasing premises for ninety-nine years, 93 C 519

covenant not to convey without giving A chance to buy is assignable and binds heirs, personal representatives and assignees of each party even if assigns are not mentioned, 93 C 519

covenant not to sell until six months after A or his assigns had chance to buy creates contingent interest and violates Statute against Perpetuities in force in 1888, 93 C 519

covenant not to sell except under certain restrictions is a restraint on alienation, 93 C 519

covenant binding covenantee "his heirs, executors and administrators" binds his assignees if they take as purchasers with notice, 93 C 519

feature of a real covenant which makes it assignable is possibility of future breach, 93 C 519

vested estate not forfeited for breach of condition subsequent whose performance is later prohibited by law, 96 C 182

——construed by language of deed read in light of surrounding circumstances, 96 C 531

——restriction of buildings to dwelling houses not to be occupied by more than one family, construed, 96 C 540

provision that if land ceases to be used for church building it shall revert to grantor's heirs is valid, 98 C 221

on gift to church in trust on condition that doctrine be adhered to and if not property to go to State society, no reversion if condition broken, 98 C 677

——but equity would enforce trust, 98 C 677

——insertion of one condition excludes others, 98 C 677

——but in this case condition expressed excluded reverter, 98 C 677

provision for reversion, in case of grant for charitable trust, not void as unreasonable restraint on alienation, 99 C 39

restraints on alienation, by way of condition, void, 99 C 653

restraint against alienation of property, 105 C 261

in determining whether covenant runs with land, intent of parties is material consideration, 108 C 26

——agreement collateral to mortgage of tract to release individual lots in payment of certain sum *held* not to run with land, 108 C 26

——hence would not avail subsequent incumbrancer of lot, 108 C 26

conditions subsequent and conditional limitations defined and distinguished, 109 C 529

——gift over to use of inhabitants of certain city, or failing that, to revert to the grantors, their heirs and assigns, creates estate with condition subsequent, 109 C 529

——where executors made deed of land, with reverter to the "original grantors, their heirs and assigns" it runs to heirs of decedent, 109 C 529

to give effect to a reverter is not to impose a forfeiture, 109 C 529

by executors with reverter to grantors on condition *held* not within Statute against Perpetuities, 109 C 529

language of entire deed to be considered in determining meaning of provision for reverter, 109 C 539

conveying farm for so long as it should be used for school purposes, creates base or determinable fee, 110 C 267

warranty deed will convey entire property and interest of grantor in tract, unless different intent appears, 110 C 267

——hence will carry reverter upon base fee as to part of tract previously granted so long as used for a school, though this right not mentioned, 110 C 267

implied covenant that highways in tract laid out in accordance with map be kept open for lot owners, 112 C 28

where deed to town of sixty-six foot strip was conditional on using it for highway and otherwise *held* that there was no acceptance where conditions were not fulfilled, 112 C 340

release clause in mortgage as covenant running with land; not enforceable where mortgagor is in default, 114 C 467

where deeds of land are of record, lessee is bound by covenants in them though not referred to in lease, 115 C 122

where owner of tract makes map showing streets and sells lots referring to map, lot owners have right to have streets kept open, upon principle of estoppel or implied contract, 118 C 187

——on same principle owners have right to have open square on park kept open, 118 C 188

——but no implied covenant that size or shape of lots delineated on map should not be altered, 118 C 188

until breach of condition proprietor of determinable fee has all rights and privileges of owner in fee simple, 119 C 106

——grantor retains at most a mere possibility of reverter, 119 C 106

——holder of determinable fee regarded as owner for purposes of taxation and tax exemption, 119 C 106

where grantor conveys land describing it as bounded on street, no covenant is implied that street will be made and maintained fit for travel, 120 C 519

clauses in deeds to plaintiff and predecessors in title that property subject to building lines if established, not admission of legal building line and of no effect when building line illegally established, 124 C 392

law does not favor restraints on alienation and will not recognize them unless stated in unequivocal terms, 128 C 31

§ 11. ——Restrictions as to Use

grant on condition that no liquors shall be sold on the premises, 25 C 247

——open public sale by tenant of grantee with grantee's assent works a forfeiture, 25 C 247
restriction on use of land is void if not of public or private benefit, 30 C 590
——prohibiting erection of mill *held* a personal easement only, 30 C 589
right of entry for condition broken not assignable at common law, 31 C 468
provision that building line be forty feet from street line *held* restriction running with land, 68 C 358
a restrictive covenant will be construed against, rather than in favor of covenant, 85 C 289, 94 C 637
restrictive covenants in derogation of common law are not extended by implication, 85 C 289
a home for orphans supported chiefly by charity but in part by payments by inmates is not forbidden by a covenant against "business," 85 C 290
restrictive covenants in derogation of common law rights not extended by implication, 94 C 631
"out house" does not include garage attached to dwelling, 94 C 631
equitable easements growing out of deed of land subject to restrictions, for purpose of division into building lots, 96 C 530
——restrictions presumed to run with land rather than to be personal, 96 C 530
whether building restriction lessens value of lot is a question of fact for trier, 99 C 665
where plaintiff has stood by for many years while defendant has developed factory on his land contrary to restrictions, without making objection, he is guilty of laches, 100 C 652
——if injunction against it now would work disproportionate harm to defendant it may be refused, 100 C 652
——doctrine of equitable easements stated, 100 C 662
——effect of trivial violation by plaintiff of some restrictions, 100 C 663
——if any one of several plaintiffs entitled to relief, it must be given, 100 C 665
restriction in deed of tract to be divided into building lots is for benefit of, and is binding upon, all subsequent purchasers, 103 C 177
restrictions as to use of lots into which land is divided as giving rise to reciprocal rights in nature of equitable easements, 103 C 178
——ordinarily prior purchaser cannot enforce additional restrictions in later deed, 103 C 178
——unless imposed for his benefit or part of uniform scheme, 103 C 178
——but restriction on adjoining lot against sale of gasoline, oil and grease does not violate restriction to use for sale of ordinary merchandise, 103 C 178
driveway leading to filling station violates restriction to use for dwelling purposes, being integral part of business, 103 C 178
reference to "carting, etc." in grant of way, *held* not to be restriction upon its uses, but a limitation upon its location, 104 C 596
restriction against leases for more than one year and relating to height of buildings, when opposed to public policy, 105 C 261
enforcement of restrictive covenants as against each other by successive grantees from common grantor, 105 C 464
under what circumstances prior purchaser may enforce restrictions against subsequent purchaser, 105 C 464
common grantor, having created restrictions against grantees, has thereafter no power to discharge them, 105 C 464
right to equitable relief against violation of restrictions not dependent on existence or amount of damage, 105 C 464
when restrictions are discharged by changed conditions of the property, 105 C 464
one who violates restriction with full knowledge of possible consequences, cannot resist injunctive relief on ground that he will suffer disproportionate loss of money expended, 105 C 464
where restrictions part of common development plan; right of all lot owners to enforce, 105 C 657
release of restrictions by common grantor does not affect right of other purchasers to enforce them, 105 C 657
relief against restrictions upon sufficient showing of changed conditions, 106 C 66
agreement that conveyance of real estate shall be rescinded unless grantee can secure judgment releasing restrictions is not opposed to public policy, and grantee may maintain action, 106 C 66
whether agreement restricting use of real estate creates an interest in land, 106 C 243
if covenant restricting use of land runs with land, grantee bound, 107 C 109
——if it does not, he is bound only if he takes with notice, 107 C 109
——in latter case basis is not easement, but that one taking with notice will not be permitted to defeat right of another, 107 C 109
——where owner of two lots conveys one subject to restriction, whether covenant runs with lot retained to benefit of grantee depends on intention, 107 C 109
——how determined, 107 C 109
——injunction will not issue for breach, when, 107 C 109
——restriction on sale of vacant lot to one-family house *held* for benefit of lot retained but where three-family house has been erected injunction denied, 107 C 109
restriction upon lawful use of property to be strictly construed in favor of lot owner, 107 C 400

the "front" of a vacant corner lot *held* to refer to its shorter side in a restriction against building, 107 C 400

building restrictions, 108 C 359

——three classes; mutual covenants between adjoining owners; general development scheme; where owner on selling part of land exacts them for benefit of remaining land, 108 C 359

——in case of first two, they may be mutually enforced, 108 C 359

——not so as to last, except that right passes with sale of land entitled to them and grantee may enforce them against one purchasing other land with knowledge, 108 C 359

——right to such covenants as an easement, 108 C 359

——if land subject to them taken by eminent domain, compensation must be made to owner entitled to them, 108 C 359

——but injunction will not lie to prevent taking, 108 C 359

——measure of damages, 108 C 359

creator of valid restriction cannot release it as against others who have acquired rights in it, 108 C 359

avoidance of building restriction through changed conditions in the neighborhood, 108 C 359

enforceability between lot owners of restrictions where tract is developed under general plan; intent of grantor; form of restrictions, 112 C 28

restrictions *held* for benefit of developer of tract and not enforceable between lot owners, 112 C 28

valid restriction upon use of real estate is an incumbrance, 113 C 331, 118 C 180

restriction in deed required consent of three-fourths of adjoining lot owners for maintenance of store; *held* that defendant had not secured it, 114 C 39

——consent of president of corporation, individually not binding on corporation, 114 C 39

——consent by one partner not effective without other partner, 114 C 39

——consent given, revocable before necessary three-fourths were obtained, 114 C 39

——consents must be from those owning lots when use is undertaken, 114 C 39

lease to quarry rock; restriction against taking rock so quarry face will show construed, 115 C 70

a covenant restraining use to which land may be put in future as well as in present and which might affect its value, touches and concerns the land and is a covenant real, 115 C 122

——a covenant in a deed of land across the street from location of grantor's furniture business that for a period of fifteen years it should not be used for such business runs with the land, 115 C 122

——a restriction upon the conduct of a certain business upon a particular piece of land for a reasonable purpose and reasonable period does not violate public policy, 115 C 122

——intent shown by language of covenant an important element in determining its nature, 115 C 125

——conduct contrary to performance of covenant would be a breach of it and give rights to at least nominal damages, 115 C 122

——grantor may enforce though subsequent to deed he formed a partnership and later a corporation to conduct the business, 115 C 122

——covenant against conducting a retail or wholesale furniture business on certain premises construed to prevent furniture department in chain store, 115 C 122

creation of area restricted to residential purposes contemplates continued existence of such area from which business is excluded, 117 C 176

——also contemplates that business may extend to confines of area, 117 C 176

——purchasers buy in reliance that development will retain residential character, 117 C 176

——so long as it remains possible to carry out original purpose of development, each purchaser of lot has right to protection of restrictions in absence of laches, waiver or abandonment, 117 C 176

——only where there has been radical change in conditions that equity will hold restrictions no longer enforceable, 117 C 176

purpose of restrictions is to prevent property being devoted to business use if it should become more valuable for such use than for residence, 117 C 176

——fact that it would sell for more with restriction removed would not warrant its removal, 117 C 176

——nor is right of owner of dominant tenement to enforcement dependent upon existence of amount of damages to his property which would result from its removal, 117 C 176

where beneficial value of restrictions has already been destroyed by radical change in character of restricted area, equity will ordinarily deny injunctive relief, 117 C 176

building restrictions on development on post road commenced in 1906; since then business structures erected on road next restricted area but have not encroached on it; greatly increased traffic on road rendered lots more valuable for business and less so for residence; *held*

——conditions have not undergone such material change as to prevent general plan of development being carried out, nor has it been abandoned, 117 C 176

——fact that change of plaintiff's properties from residential to business use would not affect value of defendants' (other lot owners) properties would not justify removal of restriction, 117 C 176

——this upon assumption that beneficial value of restriction has not been destroyed, which is the fact, 117 C 176

restrictions upon use where tract is subdivided pursuant to general plan of development constitute negative easements which may be enforced by any grantee against another, each parcel becoming both a dominant and servient tenement, 117 C 180, 118 C 180

meaning of "front" with respect to which of two streets a lot fronts on, 118 C 185

restrictions in framing of which subsequent purchaser has had no voice should be so clear that by acceptance of deed he may reasonably be deemed to have acceded to them, 118 C 186

existence of express restrictions in deeds negatives existence of any implied covenants inconsistent with them, 118 C 180

——there might be development where uniformity of size or shape of lots, etc., was so essential that in absence of express restriction there might be implied covenant against change, 118 C 180

deed of tract contained restriction against subdivision into lots of less than one hundred feet frontage and map filed; *held*

——subdivision thereafter of one lot on corner so that there were two lots each having one hundred feet on different streets not a breach, 118 C 180

——nor did it violate restriction in all the deeds against subdivision, 118 C 180

——mere making and recording of map did not create implied covenant that lots should not be subdivided into lots which did not violate express restrictions, 118 C 180

when more than one interpretation permissible, restrictions on use of land not to be extended by implication; doubtful language to be construed against rather than in favor of covenant, 124 C 191

——when meaning of language is doubtful, with its context, it is to be read in light of surrounding circumstances, 124 C 191

covenant by grantor that land "lying at south end" of parcel conveyed and "between said land and the highway" should remain open and no building erected on it, also right to pass and repass across it, construed, 124 C 191

——extent of land subjected to easement only such as to afford means of access, 124 C 191

action for modification of building restrictions, 125 C 373

——on proper complaint and a sufficient showing court has power to do so, 125 C 373

——only when there has been radical change in conditions which completely defeats objects, will equity hold restrictions no longer enforceable, 125 C 373

——distinction between action for modification and one to enforce them by enjoining breach, 125 C 373

change of economic conditions so that buildings could be built for two-thirds of amount they would have cost at time restrictions as to cost made, no sufficient ground to modify such restrictions a corresponding amount, 125 C 373

——but in particular case equity might decline to enforce letter of covenant, 125 C 379

where owner of property in development scheme divides it into building lots to be sold by deeds with uniform restrictions, any grantee may enforce them against any other, 129 C 433

restrictive covenants, being in derogation of right to use land for any purpose, will not be extended by implication, 129 C 433

——if language is doubtful it will be construed against rather than in favor of covenant; covenant to be read in light of existing circumstances and purposes, 129 C 433

covenant not to erect or maintain building except one-family dwelling violated by use as rooming house, 129 C 433

——claim that "maintain" related to structure of house rather than use, without merit, 129 C 433

——slight variations in terms and expiration dates of covenants in deeds to various lots, nil sig., 129 C 433

question of damages immaterial to right to enforce building restrictions; sufficient if plaintiff has enforceable legal or equitable right, 129 C 433

——court did not abuse discretion in enforcing restriction which had only year and a half to run, 129 C 437

§ 12. ——Reservations and Exceptions

deed to daughters reserving use for life for wife's benefit, *held* not defeated by subsequent deed after divorce, 1 D 271

deed in nature of testamentary devise delivered as escrow and power to revoke reserved, 4 D 79

——*held* to be a deed of grantor presently with trusteeship in holder and relation back, 4 D 79
reservation of superstructure reserves that only, 8 C 374
——inapplicable to building subsequently erected on same site, 8 C 374
conveyance of fee reserving life estate in grantor is valid, 11 C 550, 19 C 121, 52 C 513
deed containing reservation of water privilege construed, 14 C 360
difference between reservation and exception, 16 C 482
reservation cannot be to a stranger, 16 C 482, 33 C 335
exception will not confer interest on a stranger, 16 C 482
reservation of right to erect dam below mill site granted, runs with land, 21 C 100
reservation of right to open highway, construed, 25 C 335
——election to open in one place *held* not exhaustive if within reservation, 25 C 336
deed of fee reserving life estate conveys only a remainder, 35 C 297
exception of right to have shed stand "during the life thereof," 38 C 254
——"life" means during existence and use of shed as such, 38 C 254
——owners may make reasonable repairs, 38 C 254
"reserving to myself the use of the well," 38 C 541
reservation in a deed, defined, 38 C 541
whether "reserving" be an exception or reservation depends upon circumstances, 38 C 541
reservation of right to pile seaweed on "shore," construed to mean "upland," 40 C 400
incumbrance to be excepted from covenant must be accurately stated, 41 C 133
reservation *held* to reserve the power to dedicate for highway, 51 C 444
reservation of life estate *held* valid; not repugnant to grant, 52 C 513
quitclaim releases a reservation or condition imposed by an earlier deed to same grantee, 54 C 62
——not limited to mere release of mortgage, 54 C 63
what is an exception, 62 C 207
rule as to the use of "heirs" in creating an estate of inheritance does not apply to an exception to a grant, 62 C 203
reservation of right of way over railroad to wharf, *held* not a personal easement but for benefit of the owners of wharf lot, 62 C 203
——railroad company has no right to raise tracks so that owners of easement cannot conveniently cross, 62 C 200
——where deed specified that rails should be at a certain level, *held* to be an agreement with grantee to keep tracks at that level, 62 C 208
reservation of rights of way when treated as exception, 62 C 207
——is an exception out of the grant where clearly for the benefit of the principal estate, 62 C 204
exception from covenant of "such rights of passway, if any, as may exist of record," 69 C 263
reservation, in deed, in consideration of support to be furnished, of right to mortgage land construed and upheld, 69 C 531
exception of land from deed of land and appurtenances excepts appurtenances to land excepted, 71 C 729
distinction between reservation and exception, 72 C 192, 77 C 173
whether reservation inures to heirs and assigns; use of words of inheritance, 72 C 192, 77 C 175
reservation imposing on railroad construction of crossing so as to give opportunity "to pass to back land," 72 C 193
exception from one covenant as excepting from all, 73 C 244
excepting mortgage from covenant excepts interest as well, 73 C 246
construction of reservation of right in paint mine; limitation as to time of opening it, 77 C 168
reservation to one of two joint tenants *held* to constitute a fee, transmissible, 77 C 168
possession under deed by grantee makes reservation binding on him, 77 C 168
way reserved in connection with other land becomes appurtenant to it, 85 C 190
on reservation of a way, 85 C 190, 87 C 31
an exception or reservation, in a deed, of passway must be definitely described, 85 C 545
conveyance of a lot, with an exception and reservation of a passway to be used in common with occupants creates a reservation of a right of way, the fee vesting in grantees, 85 C 546
passway reserved for use of occupants of a block cannot be used by others, 85 C 546
grantor who makes an exception and reservation to himself but has no land to which it can apply has an easement for life only, there being no words of limitation, 85 C 546
no express words necessary for a reservation or exception, 88 C 51
deed of town reserving right to dig gravel construed to mean that every one could take gravel as long as it lasted, 88 C 51
deed reserving a right of way not before in existence creates reservation, not exception, 112 C 594

reservation making no mention of heirs or assigns creates right personal to grantor rather than appurtenant to land, 112 C 594
provision in deed construed so as not to permit cancellation of easement reserved, 115 C 726
reservation of easement of necessity in recorded deed not implied when grantees' successor did not have actual or constructive notice, 117 C 558

§ 13. ——Appurtenances; Easements; Water Rights

schooner's boat does not pass under description of appurtenance, 2 R 71
word "appurtenances" in deed may pass right to use of water, 5 C 219
deed of land conveys only what appurtenances, 6 C 292
deed of land conveys buildings thereon, 9 C 377
——intent to convey only part of buildings is immaterial, 9 C 378
language *held* to convey right of way over adjoining land, 14 C 402
land will not ordinarily pass as appurtenant to land; when it does so pass, 16 C 273
right to build raceway is no right to draw all the water such way can hold, 22 C 97
word "appurtenance" merely, following specific grant, confined to what, 24 C 546
deed granting a public right of way, 29 C 371
right to use water as "they and their grantors have a right to do or have been accustomed to do," 30 C 482
deed, with right to deepen ditch across grantor's land; evidence of custom to widen, 34 C 43
right by grant to raise dam and flow land for benefit of factory, passes by deed of dam, factory and "privileges and appurtenances," 35 C 400
right of way may be treated as appurtenant under special circumstances, 35 C 561
grantee takes only such appurtenances as are annexed to or part of grant at the time, 36 C 498
grant of right to build and repair dam; may use accustomed way, 41 C 309
deed of mill site with water privilege and right to use all the water, etc., *held* limited by subsequent language, 49 C 469
of land with "appurtenances thereof" does not pass the right to carry water through such land, 51 C 307
of way accompanying lease, "to hold said right of way" as long as they shall occupy store for grocery business now carried on by them *held* a way in gross, not appurtenant, 53 C 554
——personal to grantee and not assignable or inheritable even by words in deed, 53 C 556
——ceased when lessees ceased to carry on business as owners, 53 C 556
two deeds *held* not to convey an easement in adjoining land, 54 C 99
——might be created by deed in connection with peculiar facts if defendant owned adjoining land in severalty, 54 C 99
——but owning only as tenant in common, the deed alone would not convey, 54 C 100
language *held* adapted to convey entire fall of river on grantor's land, 55 C 376
a grant to mill owner of specific right to flow for an indefinite period upon an annual rent, *held* not a lease from year to year, 56 C 198
——it was a grant by deed of an easement appendant to the defendant's mill, 56 C 198
bars as an incumbrance to a right of way, 67 C 279
right in beach reserved from plotting; right of one adjacent owner to prevent its invasion by others, 76 C 295
water privilege can pass as an appurtenance though not mentioned in deed, 82 C 95
deed to take, use, and appropriate water construed, 83 C 611
"appurtenances" carries appurtenant easements, 84 C 429, 85 C 190
grant of right of way conveys no right of use in connection with other land of grantee, 85 C 546
character and extent of an easement shown by language of the deed, 85 C 546
party having easement with others in a passway cannot lay or maintain pipes therein, 85 C 546
the deed determines rights of grantor and grantee in passway, 87 C 31
words in a deed construed to give a twelve foot space open to the sky and running with land, 87 C 31
executor not estopped to assert claim to personal way although he gave deed as such executor without reciting said way, 90 C 241
"appurtenances" carries appurtenant way not mentioned, 90 C 242
conveyance of upland presumptively includes riparian rights; may be rebutted, 93 C 502
what included in "home with all its appurtenances," 95 C 122
character and extent of easement determined by ordinary import of language used, unless circumstances exceptional, 104 C 139
if easement granted in general terms, it includes use for all reasonable purposes, 104 C 139
grant of land "with privileges and appurtenances" is sufficient to carry appurtenant right of way, 104 C 596
isolated statements of width of passway in deeds of servient tract not controlling as

against practical construction and intention of parties, 104 C 596

conveyance of land "with the appurtenances thereof" carries appurtenant right of way, 107 C 32

——when grant of right of way will be implied from its necessity, 107 C 32

warranty deed *held* not to carry implied grant to maintain underground sewer pipe across adjoining land, 108 C 19

deed carries implied grant of easement only when necessary and when user open, visible and apparent, 108 C 24

grant in deed "together with the right to pass and repass" does not include right of way for other contiguous land of grantee, 109 C 297

purchaser of lot in tract where deed referred to map on which proposed street was shown *held* to have right to use street where it was benefit to his lot, 112 C 557

deed conveying land under pond with rights of flowage and buildings and equipment for harvesting ice, *held* to convey prescriptive right to cut ice on pond, 114 C 496

fact that deed did not include mill site and dam *held* not to work severance of flowage rights so as to make deed ineffective to convey them, 114 C 496

habendum clause granting premises with appurtenances sufficient to carry ice-cutting privilege on adjacent pond, 114 C 502

——right attaches to land conveyed though it is not all of tract to which right was formerly appurtenant, 114 C 502

test of when lot owner can enforce right to use street shown on development map, is whether it is of benefit to him, 114 C 642

defendant represented that deed conveyed land on which garage stood; in fact it described property so that garage encroached on other land of defendant; *held* law implied grant of easement in defendant's land sufficient for use of garage, 116 C 156

——deed of defendant's other land subject to encroachment of garage put grantee on notice of plaintiff's rights, 116 C 156

——court should have recognized plaintiff's easement in estimating damages, 116 C 156

covenant by grantor that land "lying at south end" of parcel conveyed and "between said land and the highway" should remain open and no building erected on it, also right to pass and repass across it, construed, 124 C 191

——extent of land subjected to easement only such as to afford means of access, 124 C 191

§ 14. Validity; Cancellation; Alteration

See also Fraudulent Conveyances; Reformation of Instruments § 2

deed of land of which grantor is disseised is void, 1 R 100, 199, 402, 2 D 151

several collectors cannot join in one deed of land sold by them severally, 2 R 437

evidence admissible to explain character of possession at time of conveyance, 2 D 121

deed by husband and wife valid, though husband an alien, 4 C 44

a mortgage is not an alienation within statute against selling pretended titles, 4 C 421

after delivery and possession taken, a mere return and cancellation does not revest title, 4 C 551, 5 C 264

not void because consideration did not pass immediately, 5 C 117

deed from ward to his overseer is void, 5 C 255

land once conveyed cannot be retransferred by a destruction of the deed, 5 C 264

deed altered by consent is inoperative without new attestation and acknowledgment, 8 C 293

——immaterial alteration does not render deed void, 8 C 293

to three persons or either of them, void for uncertainty, 10 C 261

of three lots *held* void as to one, valid as to the others, 13 C 77

absolute deed to secure debt *held* void against creditors, 13 C 381, 15 C 514

testamentary disposition by deed *held* valid, 16 C 479

deed directly from husband to wife is invalid, 16 C 482

declarations of grantor in absence of grantee inadmissible to invalidate, 16 C 535

both delivery and acceptance are essential to validity of deed, 18 C 261, 20 C 425

deed of building by committee of voluntary association assented to by each member in writing *held* valid, 19 C 167

quitclaim deed is an alienation within meaning of statute against selling pretended titles, 19 C 471

only object of recording is to give notice; validity depends on other circumstances, 21 C 463

administrator's deed is not void because less land is sold than order directs, 22 C 276

statute validating deeds in other States of land here, does not validate if deeds are not valid to convey land in State where made, 26 C 381

deed defective in formal requisite treated in equity as an executory contract for the sale of land, 27 C 104

conveyance of an undivided right in entire estate of present value of $500, in fee simple in common with grantor, *held* void for uncertainty, 30 C 425

testamentary trustee need not set out his authority to sell in deed, 32 C 347

contract to support father for life; deed of all estate to son; reconveyance decreed, 41 C 479

deed exactly as parties intended; no change can be made, 55 C 385
——where condition is expressly left out of deed and incorporated in a written agreement there is no ground of correction, 55 C 385
alteration, to avoid, must be material; what is, 64 C 78
changing consideration is not alteration, 64 C 85
deed of one out of possession; row of piles on tidewater flat as indicative of possession, 69 C 28
——ouster which avoids, includes what, 71 C 555, 74 C 523
covenant to stand seized or declaration in trust intended to serve illegal purpose is void, 70 C 637
where one action is based on claim that deed was never executed, and another on claim that it was without consideration and void, judgment in former *held* bar to latter, 70 C 709
effect of knowledge on the part of beneficiaries as to deed of trustee, 76 C 295
estoppel to claim invalidity from standing by in silence when deed is given, 76 C 484
one not of average mental capacity can execute, 76 C 484, 79 C 644
grant of way cannot be made to community, 78 C 130
where one of several grantors seeks to set deed aside, other grantors must be made parties, 79 C 644
——necessity of restoring consideration, where grantee acted in good faith, 79 C 644
——setting aside part only of family settlement, 79 C 644
no equitable ground for setting aside a conveyance between husband and wife when the land was returned to him, 81 C 49
quaere, whether erroneous belief of husband that he will inherit land he conveys to wife is ground for setting deed aside, 81 C 49
deed of one ousted, void only as prohibited by common law against maintenance and by statute, 81 C 133, 547, 84 C 570, 93 C 113
deed executed and delivered in New York upheld by New York law, 81 C 539
deed set aside that has never been knowingly executed, was without consideration, and under which grantee never made any claim, 83 C 347
grantor's heirs and administrators cannot demand a forfeiture on other grounds than grantor, 84 C 512
unintentional failure to live up to an agreement is no forfeiture, 84 C 512
reconveyance proper where deed never delivered but unlawfully taken, 85 C 661
where administrator gives warranty deed instead of administrator's deed, defect is cured by validating act, 86 C 282
whether deed is good that has no name of grantee quaere, 89 C 66
deed absolute in form with secret defeasance clause, invalid against attaching creditors, 89 C 439
grantee gets no title if grantor has no authority to convey, 91 C 272
conveyance by one ousted does not prevent either party bringing an action in name of grantor to determine validity of possession, 93 C 113
deed lacking assent of grantor or secured by undue influence is voidable, 93 C 366
——may be avoided without resorting to equity for cancellation, 93 C 366
deed of insane person voidable, not void, 93 C 370
fraud in consideration and in execution as affecting deeds, 93 C 371
mere mistake for failure to comprehend legal consequences no ground for cancellation, 94 C 276
——aliter where party takes unconscionable advantage, 94 C 276
no ground for cancellation of deed if grantee is found to be rightful owner, 98 C 221
deed by life tenant in excess of limited power of sale is void, 101 C 39
competency to make deed differs from capacity to make contract or transact business, 101 C 603
by statute, deed is void where grantor ousted of possession by one other than grantee, 102 C 52
conveyance by father who is ill to daughter as a gift, *held* not to be testamentary disposition, 103 C 88
essentials of a valid conveyance of real estate, 103 C 88
deed by grantor out of possession is void, 103 C 332
ouster by person other than grantee does not render deed void unless essentials of adverse possession exist, 104 C 285
validating acts validate specific irregularity in deed otherwise valid, 109 C 307
——do not validate deeds defective in several particulars, 109 C 307
heirs and distributees can convey without administration, 109 C 452
by one out of possession invalid under statute, 109 C 693
where land can be identified though two of boundaries are wrongly given, deed is not void for uncertainty, 110 C 374
——grantee entitled to reformation as against grantor and subsequent grantee who took without consideration and with notice, 110 C 374
specific restitution may be by reconveyance or cancellation of deed, 121 C 548

deed to defendant set aside for undue influence; defendant entitled to nothing by way of restitution, 122 C 634
conveyance from plaintiff to defendant, giving due weight to relationship as brothers, proceeded from former's own wish and not result of influence or persuasion, 125 C 66
where A was deeded vacant lot, parties believing deed conveyed him adjacent lot with house on it, and gave back mortgage, there was clear case of mutual mistake and he was entitled to cancellation and money back, 129 C 20

DEFAULT

See Judgments § 16

DEFAULT IN APPEARANCE

See Appearance

DEFEASANCE

See Estates on Condition; Deeds § 10

DELIVERY

See Bills and Notes; Carriers § 4; Deeds § 3; Guaranty; Sales § 7

DEMAND

See also Bills and Notes § 16; Ejectment § 6; Replevin § 3; Trover and Conversion § 3

unnecessary before suit after waiting a reasonable time, when, K 113, 32 C 540
required before suit on contract to deliver specific articles on demand, 1 R 210
unnecessary, if property is forcibly taken, 3 C 435
special demand unnecessary where there is a precedent debt or duty, 4 C 355
place of demand and place of delivery are not necessarily coincident, 5 C 78
contract to deliver upon demand means on a reasonable demand, 5 C 78
——silence on reasonable demand is equivalent to a refusal, 5 C 79
by creditor on administrator is not required before suit on bond, 5 C 383
demand and refusal is no foundation for an action of trespass, 5 C 493
on execution by first attaching officer is not necessary before suit in trespass against second attaching party, 14 C 228
not essential unless stipulated in contract, 15 C 55
informality in demand waived by unconditional refusal, 26 C 479
demand must be made before action lies for attached goods delivered by officer to receiptor, 27 C 251
office of demand before suit in replevin is to furnish evidence of wrongful detention; unnecessary if wrongful detention or possession can be otherwise shown, 54 C 316
as evidence of wrongful detention, 66 C 550
where money is received for express purpose and retained, 68 C 201
letter to agent directing that demand be made as evidence that it was made, 70 C 76
for possession of real property within thirty days reasonable as matter of law, 73 C 118
demand of fees due for whole year as completing cause of action for those due for part of year, 74 C 397
not necessary on notes payable at bank that owns them, 83 C 332
necessary in replevin, 86 C 373
officer need demand only sum named in execution, 86 C 615
failure to demand payment of judgment debtor does not necessarily show that payment has been made, 87 C 495
unnecessary where money held under promise of payment implied from precedent duty, 90 C 647
unnecessary in summary process if lease so provides, 92 C 144
demand implies reasonable opportunity voluntarily to comply with it, 121 C 188
when demand is necessary in trover or replevin, 121 C 188

——is ordinarily necessary in case of possession in good faith of stolen property, 121 C 188
——how issue should be raised in such a case, 121 C 188
demand on makers of note, if necessary to bind guarantors, may be for payment on a future day, 121 C 414
demand on absolute guarantors of note not necessary to fix liability; hence waiver of demand refers to demand on makers, 121 C 414

DEMURRAGE

See Carriers § 6; Andrews and Fowler Digest

DENTISTS

See also Physicians and Surgeons

statute concerning engaging in practice of dentistry construed; one or two operations are no crime, 83 C 300
registration of unlicensed assistant who performed work when no licensed dentist present *held* properly cancelled, 109 C 73
——under statute single operation constitutes practicing, 109 C 73
——that detective secured operation on himself will not defeat proceeding, 109 C 73
statute establishes exception to general prohibition against practice of dentistry by persons not licensed, 109 C 73
——failure to comply with conditions forfeits right to exception, 109 C 73
cannot ordinarily be charged with negligence in absence of expert testimony, 111 C 482
——leaving to jury to say whether wound in tongue should be disinfected improper, 111 C 482
——presumption that professional man has discharged duty not wholly applicable in action for malpractice, 111 C 482
——that operation resulted unfavorably does not raise presumption of negligence, 111 C 482
——duty of patient to conform to treatment and follow directions, 111 C 482
——failure to do this as defense to action for malpractice, 111 C 482
one holding himself out as specializing in exodentia is required to use degree of skill ordinarily used by such a specialist, 111 C 482
where claim was that dentist injured nerve in treatment after operation to remove tooth, verdict properly set aside in absence of medical evidence that such treatment produced injury complained of, 116 C 13
malpractice case; where no expert testimony de fractured jaw and removing fragment of tooth from it, directed verdict for defendant dentist proper, 118 C 693
malpractice action for removing two sound teeth instead of two abscessed teeth, 119 C 390
——question of fact whether x-ray was shown to dentist and he removed wrong teeth or whether plaintiff pointed out wrong teeth to him to remove, 119 C 390
——court's emphasis on extraction of sound teeth rather than failure to remove abscessed teeth not error in view of charge as whole, 119 C 390
——court's remarks, in setting out defendant's claims, that plaintiff pointed out teeth to be extracted, not erroneous, 119 C 395
——charge as to fair preponderance of proof sustained; impracticable to require court to instruct as to degree of preponderance, 119 C 390
knowledge of defendant, actual or constructive, that broken roots of extracted tooth remained in plaintiff's jaw, prerequisite to liability of defendant for failure to inform her of fact, 126 C 608
——finding that defendant should have known he left broken roots in jaw, unsupported by expert testimony, could not stand, 126 C 609
——since no obvious gross want of care and skill was manifest, doctrine of res ipsa loquitur did not support inference of negligence, 126 C 609
revocation or suspension of license; dental commission, in acting on charges, should proceed in quasi-judicial capacity, reaching decision on evidence produced before them, 128 C 117
——not intention of legislature that any of commission, except recorder, should personally investigate charges, 128 C 117
——where no oral evidence produced at hearing other than unsworn statements of members, two of whom testified as to their personal investigation of offices of dentist, violation of proper procedure so fundamental that trial court should have sustained appeal, 128 C 117

DEPOSITIONS

§ 1. In General
2. Notice
3. As Evidence; Objections

§ 1. In General

only sum allowed by statute should be taxed as costs, K 235
deposition once offered may not be withdrawn to prevent use by adverse party, 2 R 103
jurat need only state deponent was "duly sworn," 1 C 519
not indispensable that reasons for taking be stated in certificate, 3 C 171
mere informalities in deposition will not vitiate, 3 C 180
deposition must not include any written statement by party, 5 C 340
bill to perpetuate testimony fatally defective in not stating plaintiff's title to land, 5 C 352
——bill must show that defendants are interested in subject matter, 5 C 352
——bill and prayer for relief cannot be joined, 5 C 353
reasons for taking must appear in magistrate's certificate; cannot be supplied by parol, 7 C 148
if apparently signed by deponent, magistrate need not certify to the fact, 20 C 215
deponent must be absent at time of trial, 23 C 318
adjournment presumed, if taken at time and place other than specified, 24 C 511
competent for magistrate to adjourn time and place of taking, 24 C 512
certificate of magistrate to receive a fair construction, 24 C 512
adverse party may be compelled to give his deposition, 30 C 358
statutory requirement that depositions should be directed to the court sufficiently complied with by a direction to the clerk of the court, 32 C 292
law partner of counsel engaged is not competent to take, 37 C 218
——statutes aim at utmost fairness in taking, 37 C 218
rule de filing on first day of term is not inflexible, 40 C 101
——if taken in term time, may be received, when, 40 C 102
time within which it should be sealed and returned to court, 44 C 226
closing flap of envelope with gum a sufficient sealing, 44 C 227
deposition in behalf of a town may be taken before a magistrate who is a taxpayer of the town, 52 C 158
statute de use of depositions in appellate court not applicable to Superior Court hearing a remonstrance to report of special commission, 76 C 567
deposition must be offered as a whole when, 86 C 474
deposition may be taken under either § 686 or 679, Rev. 1902, 89 C 202
adverse party has right to be present at taking, 91 C 404
deposition may be taken in any other State or country by notary public, 100 C 382
that one has given deposition no excuse for failure to obey subpoena, 116 C 389

§ 2. Notice

ancient statute de notice, when deposition taken out of State, K 2, 1 R 307
deposition admissible only against those having notice, K 100
deposition admitted though adverse party not notified; deponent lived within twenty miles but when sworn was absent from home, more than twenty miles distant, K 219, 283
although adverse party lives more than twenty miles distant, if he has known attorney living within twenty miles latter must be notified, 1 R 316, 480, 493
grantor cited in to defend in ejectment must have notice, 2 R 26
on a petition to perpetuate testimony, the party interested must be notified, 2 R 156
omission of magistrate to certify notice to adverse party; fact of notice may be supplied by parol evidence, 2 R 334
what is "reasonable notice," 12 C 158
deposition admissible against two joint defendants having notice, where third had none, 21 C 505
certificate is prima facie evidence of notice, 24 C 511
reasonableness of notice given is a question for the court, 27 C 298
——decision thereon, reviewable, 27 C 299
notice given must allow opportunity for cross-examination, 40 C 101
reasonable notice depends on circumstances; is largely in the discretion of the court, 58 C 495
——notice *held* reasonable, 58 C 494
ruling de reasonable notice under statute *held* reviewable, 59 C 543
notice to take in China *held* not sufficient in point of time, 59 C 544
reasonable notice under statute depends upon the circumstances of the particular case;

how far it is in the discretion of the court, 59 C 544
statute de notice to take deposition to be interpreted liberally, 59 C 545
as to naming witness and magistrate in notice, 72 C 675
notice need not state nature of testimony; attacking credit, 78 C 180
notice of taking *held* not insufficient; discretion of court, 83 C 65
purpose of notice, 91 C 408

§ 3. As Evidence; Objections

deposition admissible only against those having notice, K 100
deposition admitted though adverse party not notified; deponent lived within twenty miles but when sworn was absent from home, more than twenty miles distant, K 219, 283
deposition of one with child too sick to be left, admissible, as within reason of statute, 1 R 76
deposition given on petition to General Assembly, between same parties and relative to same point now in dispute, admitted, though taken before action commenced, deponent having died, 1 R 82
deposition drawn up by agent of plaintiff not admitted, 1 R 226
if deposition drawn by party and copied by third person, it is inadmissible, 1 R 259, 8 C 178
deposition may be taken in qui tam suits, 1 R 307
if deposition taken before authority in other State there incompetent, it is admissible if such officer could act here, 1 D 34
deposition inadmissible in United States courts, unless written by deponent in magistrate's presence, or by magistrate, 4 D 126
indirect evidence that deposition is in party's writing admissible, when, 4 C 572
if deposition written by agent of deponent, it is inadmissible, 5 C 322
depostion stating contents of a paper, which can be shown to court but which is not produced, is inadmissible, 7 C 303
deposition inadmissible, if notice designates authority incompetent to take, though it be in fact taken by authorized officer, 8 C 178
deposition inadmissible, where manifestly a copy of statement drawn up by one party, 8 C 178
deposition may be admissible, though not sufficient evidence, 12 C 138
deposition admissible though directed to Supreme instead of Superior Court, 16 C 592
if part of deposition only be inadmissible, the objection must be specific, 20 C 364
deposition admissible against two joint defendants having notice, where third had none, 21 C 505
where objection taken to deposition admitted by court, and party objecting agreed that objection might rest until argument, and in argument no allusion to it made, objection was waived, 32 C 22
deposition may be used on new trial, if granted, as well as on petition for same, 32 C 295
if accompanied by certificate of appointment of notary, though not sealed with his seal, deposition admissible, 38 C 232
attorney has authority to stipulate that deposition may be used in evidence "subject to objections noted," 57 C 564
——admits inadmissible matter where no objection made, 57 C 564
objection that deposition was out of the custody of the clerk contrary to statute *held* no error, no harm being done, 58 C 494
an objection made on trial to questions as being leading, *held* made too late, as form of question could not then be changed, 59 C 341
where party in lifetime gave his deposition covering entire case, memoranda left by him after his decease *held* not admissible 63 C 417
trial court has discretionary power to exclude deposition, where deponent on cross-examination declines to answer a material question, if objection is seasonably made, 63 C 485
——but *held* under circumstances admission of deposition was justified, 63 C 485
if party taking does not put deposition in evidence, other party can, 66 C 194
deposition not admissible if witness is present, except to contradict him, 67 C 466, 77 C 165
general objection, if part of deposition is admissible, fails, 67 C 505
objection to form of question to be made at time of taking; to matter, may be made on trial, 74 C 700, 83 C 65
if answer appears from later testimony to be hearsay, it should be stricken out on trial, 77 C 462
charge as to weight of testimony in deposition, 79 C 348
deposition made for previous trial may be admissible in connection with evidence of attempts to intimidate deponent; credit of deponent in such case *held* not open to attack, 80 C 140
objections to form of questions must be taken at time deponent testifies, 83 C 65
deposition taken at former trial admissible if witness has become incompetent, 86 C 579
State cannot put in deposition of accusing witness, 90 C 381
adverse party has right to be present at taking, 91 C 404

——in some instances refusal to allow him to be present might not affect admission, 91 C 404
deposition inadmissible against accused, 96 C 306
if not in compliance with statute, trial court has discretion to reject deposition, 100 C 378
——discretion not abused in admitting, though deposition contained statement previously dictated, 100 C 381
quaere whether incorporation of written statement of party under examination violates statute forbidding party or attorney to write, draw up or dictate deposition, 100 C 378
——if it does court may exercise discretion whether to reject it, 100 C 378
——reference to "my firm" does not import lack of personal knowledge of matter by member of it who is testifying, 100 C 378
exclusion of deposition of person in court but not called as witness, not error, 108 C 173
where only indication that person taking depositions was interested party was from his apparently asking the questions, no error to admit them, 112 C 504
——discretion of court as to depositions written or dictated by interested party, 112 C 509
trial court in memorandum commented on plaintiff's failure to appear except by deposition and impression of veracity made by defendant; no error in manner in which court weighed evidence, 118 C 716
——weight to be given evidence often depends on impression witness makes, which necessarily is lost by deposition, 118 C 716

DESCENT

See Estates of Deceased Persons § 9; Wills

DESERTION

See Divorce § 4

DEVISE

See Wills

DIRECTORS

See Corporations § 4

DISCHARGE

See Bankruptcy § 5; Guaranty § 6; Payment; Release and Discharge; Suretyship § 3

DISCLOSURE

See Discovery and Inspection

DISCOUNT

See Banks and Banking; Bills and Notes

DISCOVERY AND INSPECTION

See also GARNISHMENT; SCIRE FACIAS

court may grant commission to take answer of nonresident to bill of discovery, 2 R 515

bill for discovery lies against stockholders personally liable for debts of corporation, 3 C 139

distinction between bill of discovery and one for discovery and relief, 3 C 140

equity will entertain suit for a discovery to give relief, when, 3 C 141

discovery never decreed if subjecting party to forfeiture, 5 C 183, 6 C 363, 8 C 533

equity will compel discovery in aid of action at law, whether in contract or tort, 8 C 532

——to detect fraud and imposition and to set aside fraudulent conveyance, 8 C 533

what averments are sufficient as to parties respondent where object of bill of discovery is to ascertain these parties, 10 C 408

motion for disclosure must allege what facts, 12 C 138

discovery, when granted, and what averments are necessary, 17 C 371

disclosure is evidence only of particular fact sought in motion for; to be used only so far as responsive to motion, 20 C 494

whether respondent's disclosure in equity can be attacked by contradictions out of court, quaere, 22 C 358

disclosure of respondent should be full and complete, 23 C 187

contestants of a will are not necessarily entitled to an order for books showing accounts from confidential agent, who is chief legatee, 59 C 243

——such an order is in the discretion of the court, 59 C 243

defendant not required to disclose ground of claim to land, where plaintiff can defend pending suit by defendant against plaintiff for trespass on same land, 59 C 498

discovery is auxiliary or incidental to equitable relief; if relief sought is unattainable, discovery can answer no purpose, 59 C 506

whether bill of discovery will lie in an action at law under statute, quaere, 59 C 508

statute de disclosures on trial for intoxication *held* constitutional, 59 C 519

disclosure does not lie except where matter is in exclusive knowledge of opponent, 61 C 593, 90 C 261

statute de disclosure designed to enable court of law to exercise clearly defined powers of a court of equity, 61 C 593

——not designed to enlarge scope of discovery in equity, but simply to apply it to actions at law, 61 C 596

subpoena duces tecum; delivery of instrument to attorney; effect of production of instrument, 79 C 116

discretion of court as to ordering production of document, 79 C 116

——statement of defendant's agent as to accident, 79 C 116

refusal to order disclosure of facts that are unquestioned, harmless, 90 C 261

plaintiff seeking disclosure as to date and circumstances of personal injury, 90 C 261

procedure in disclosure, 90 C 261

disclosure can be denied if facts are sought for a defense not legally available, 91 C 553

disclosure not granted after demurrer to complaint is sustained and plaintiff refuses to plead over, 95 C 301

if disclosure of no defense is made in mortgage or lien foreclosure, it only remains to fix amount of debt and law day, 100 C 313

duty to produce and show document at request of opposing party, 104 C 508

discretion of trial court in ordering production and permitting inspection of documentary evidence, 104 C 508

court has inherent power to order inspection of documents of party; discretion of court, 114 C 165

process of subpoena duces tecum is at service of either party to action to procure production in court of documents claimed relevant on trial, 118 C 276

——within discretion of judge to permit or refuse inspection, 118 C 276

——paper not subject to inspection unless for legitimate purpose, such as refreshing recollection of witness or contradicting his testimony, 118 C 276

——where only part of paper contains proper matter for inspection court may require counsel to furnish copy of this part, 118 C 276

——and if counsel is merely on "fishing expedition" he should not be allowed to inspect, 118 C 276

——plaintiff not entitled to report of accident by motorman to company before any evidence was offered or motorman's authority was shown, 118 C 276

disclosure of facts or documents material to mover's cause of action or defense; materiality of interrogatories did not appear; facts and documents asked for not shown within knowledge or possession, 125 C 9

answer filed by party to interrogatory has same effect as judicial admission in a pleading or in open court, 126 C 336

——relieves opposing party of necessity of proving fact admitted but is not conclusive on him and will not prevail over evidence offered at trial, 126 C 336
——so where in answer to interrogatory plaintiff stated that he paid consideration for assignment of note but testified to contrary, latter prevailed, 126 C 336
effect of discovery statutes and rules is not to abrogate independent action for discovery based upon equitable jurisdiction, 126 C 382
right to discovery does not extend to all material facts; is confined to those material to mover's own title or cause of action; does not enable him to pry into opponent's case, 126 C 382
——examination of decedent's books *held* necessary to enable plaintiff to establish her right to extension of time to file her claim against estate in Probate Court, 126 C 383
proceedings of grand jury secret except for purposes of prosecutions for perjury and contradicting witnesses, 127 C 544
——permitting inspection of testimony taken before it at most a matter of discretion to be rarely exercised, 127 C 544
where document is produced in court upon order, trial court has discretion to permit or refuse inspection by opposing counsel, 127 C 602

DISCRETION

See Administrative Boards and Commissions; Appeal to the Supreme Court § 7

DISQUALIFICATION

See Judges; Workmen's Compensation § 27

DISTRIBUTION

See Estates of Deceased Persons § 9; Wills § 66

DISTRICT COURT OF WATERBURY

suit regarded as pending in appellate court as soon as the appeal is taken, 48 C 195
under statute, has jurisdiction in trespass over lands in Woodbury, where one of the parties resides in Woodbury, 51 C 170
——jurisdiction extends to actions to recover possession of lands in towns in Litchfield County, 53 C 516
appeals limited by Private Acts, 1879, to matter in demand exceeding $500; suit to recover possession of land and $500 *held* not appealable, by reason of value of land demanded, 53 C 514
suits pending at time Revision of 1888 went into effect were not affected by changes de appeals, 57 C 333
——§ 4016, Rev. 1888, modified, as affecting procedure in pending suits, by § 4017, 57 C 334
to what day appeal to Supreme Court is taken, 66 C 268
no jurisdiction to quiet title to land not in Waterbury, 72 C 698
no jurisdiction by reason of assignment made simply to confer it, 72 C 701
arbitration under rule of court as "action" permitting appeal, 73 C 715
jurisdiction over interpleader, 74 C 263
jurisdiction in equity, 74 C 264
appeals from, in general, 76 C 553
has equitable as well as legal jurisdiction, 81 C 400
Court of Common Pleas for New Haven County not given jurisdiction concurrent with District Court of Waterbury, 89 C 196
——duty of Common Pleas Court to dismiss case when lack of jurisdiction brought to its notice, 89 C 201
as City Court had no jurisdiction, District Court on appeal *held* to have none, 93 C 361
jurisdiction in personal actions as determined by residence of parties, 96 C 281
may permit amendment to an appeal from City Court, 104 C 297

DISTRICTS

See Fire and Other Districts; Schools and School Districts

DITCHES

See Fences; Sewers; Waters

DIVORCE

§ 1. In General
2. Jurisdiction; Residence and Domicil
3. Grounds
4. ——Desertion
5. ——Intolerable Cruelty
6. ——Adultery
7. ——Miscellaneous
8. Condonation and Revival
9. Alimony; Allowances for Litigation
10. Disposition and Support of Children
11. Property Settlements Prior to or Pending Divorce Proceedings

§ 1. In General

petitioner's attendance dispensed with in certain cases, K 270
decree of, may be reversed on error, 1 D 111
fact that petition was to be made by procurement of respondent good ground for dismissing it, 4 D 343
sufficient, if nonresident has actual notice and appears by attorney, 5 D 357
act of General Assembly dissolving marriage procured by fraud renders it void only in futuro, 9 C 328
puts an end to husband's curtesy even though initiate, 10 C 230
proceedings are civil although adultery or other criminal conduct charged is to be proved, 30 C 107
filing supplemental bill not to be sanctioned but if respondent is present and makes no objection he waives any error, 35 C 48
proceedings to secure, is purely a statutory remedy, 35 C 53
effect of, on a bequest to "my wife" in lieu of dower, 48 C 503
consent of the State is necessary in the form of a decree in this court, 56 C 205
every decree of, must rest upon proof of such facts as have by the Legislature been declared to be sufficient, 56 C 206
attitude of State toward divorce, 68 C 196
conveyance by husband, to prevent attachment in action for divorce, as fraudulent, 68 C 580, 78 C 414
nature of legislative divorce, 69 C 585
judgment, though fraudulent, cannot be attacked by one sued by person securing for breach of promise, 69 C 652
effect of divorce and remarriage on dower right, 72 C 148
for history of legislation, and generally, 72 C 151, 569, 78 C 242
no one has a vested right to a divorce, 73 C 54
opening judgment for fraud; who can claim, 73 C 493
ordering case to be reheard where, on appeal, finding does not present questions of law in case, 78 C 250
discretion of court as to granting, 78 C 262
provision in will for a devise, if one should be divorced, is valid, 88 C 387
prior divorce in another State is a defense to a petition for divorce, 88 C 689
comity requires courts of one State to recognize a decree of divorce in another, 88 C 690
comity rests on more than curtesy and good will, 88 C 690
——desirable to secure uniformity of treatment, 88 C 690
as to effect of rabbinical divorce, 90 C 216
provision in will that property is to go to one on death of husband is not affected by her divorce from him, 94 C 426
divorce is a special creature of statute, 97 C 443
statutory conditions must be strictly complied with, 103 C 189
finding as to facts not within specific statement may support judgment, if within general allegations of complaint and evidence as to them not objected to, 107 C 484
policy of State as to permanence of marriage status, 107 C 489
effect of separation agreement, approved by Italian courts, upon divorce action in this State, 108 C 292
attempt to secure divorce by perjury is alone ground for refusal of decree, 110 C 443
New York law as to right of wife to retain personal property in her possession after a divorce, considered, 113 C 306

——does not apply where husband had demanded and brought action to recover property before divorce proceedings begun, 113 C 306

conduct of husband in New York divorce suit does not disqualify him in conversion suit here through application of "clean hands" doctrine, 113 C 306

while in uncontested cases courts will not ordinarily grant divorces on uncorroborated evidence of parties, in contested cases they may do so on plaintiff's evidence alone if believed, 117 C 310

collusion means agreement between parties to defraud or impose on court, 119 C 612

——such as by making up false case or agreeing to withhold evidence which, if disclosed, might affect disposition of case, 119 C 612

——conveyance from husband to wife, when not made to facilitate divorce, not necessarily contrary to public policy unless concealed from court, 119 C 612

——nor is it collusion for defendant, without any understanding with plaintiff, to abstain from making defense, 119 C 612

——so where wife received settlement before husband left for Reno, and though notified of divorce did not defend, she was not guilty of collusion, 119 C 612

defendant not bound to make defense and mutual assistance in proving actual facts does not amount to collusion, 119 C 612

——so where wife sued to set aside Reno divorce, and husband desired her to win, interposed no defense, and testified for her, there was no collusion between parties, 119 C 612

laches is not mere delay but delay that works a disadvantage to another, 119 C 612

——so where woman accompanied married man to Reno to get divorce, knowing facts before arriving there, and married him month after divorce, delay of first wife in bringing proceedings to set aside decree did not prejudice former, 119 C 612

default judgment properly granted in divorce action when defendant did not appear at trial, 123 C 487

State has interest in every divorce case, 123 C 491

though defendant does not appear or contest issue, plaintiff must establish right to relief asked for, 123 C 567

to interest of State that all questionable features of suit for divorce be fully investigated, 125 C 467

essence of collusion is intent to impose on court, 125 C 468

——during protracted negotiations plaintiff offered defendant $3000 to avoid contested hearing for sake of children, but contested hearing was later had; *held* no such conduct as to deprive plaintiff of his remedy, 125 C 468

as long as there is possibility of reconciliation plaintiff should not be charged with laches, 125 C 468

——such charge would be ineffective in absence of showing of disadvantage to defendant, 125 C 468

particularly incumbent on court in uncontested divorce to satisfy itself that burden of proof has been sustained, (dis.) 129 C 708

§ 2. Jurisdiction; Residence and Domicil

sufficient if nonresident has actual notice and appears by attorney, 5 D 357

construction of statute requiring three years' residence in State, 17 C 286

——effect of nonresidence of cruel and intemperate husband, 17 C 287

judge may make orders relative to notice to be given defendant residing out of the State, 23 C 243

——notice by indifferent person, 23 C 243

——not indispensable that service of notice should be certified by oath of party serving, 23 C 243

jurisdiction; premature petition; supplemental bill allowed; waiver, 35 C 54

——waiver of defects, etc., in proceedings for, may imply collusion, 35 C 56

spending winters out of State will not prevent continuance of sufficient residence here to give court jurisdiction, 70 C 420

estoppel of one invoking court's jurisdiction to deny its power to change order, 83 C 489

one must have a bona fide residence in a State in order to get a divorce from a nonresident, 88 C 689

whether domicil was obtained in a foreign State is re-examinable in Connecticut courts, 88 C 689

a colorable residence confers no jurisdiction, 88 C 689

one can change his domicil to get a divorce but it must be a real and bona fide change, 88 C 690

requirement of residence for three years, means actual, continued residence; mere domicil which is always necessary in divorce actions is not sufficient, 103 C 189

traveling salesman, maintaining furnished room in Hartford, *held* not to have "resided" there, 103 C 189

history of jurisdiction of courts to grant, 103 C 193

domicil of wife follows that of husband, 104 C 169

what constitutes domicil, 105 C 502

——provision as to cause arising after removal to State considered, 105 C 502

——wife has no domicil where she comes to Connecticut to join husband residing here

and neither has intent to remain permanently, 105 C 502
mere residence, without domicil, insufficient to confer jurisdiction, even though cause of divorce arose after removal into this State, 105 C 502
woman residing in this State who married Italian and later returned to home here *held* to have acquired domicil here by return, 108 C 292
——that she entered country under temporary passport, had agreed as part of separation agreement made in Italy to return there and made frequent visits out of State not sufficient to destroy residence, 108 C 292
——when wife may acquire domicil for purposes of divorce apart from husband, 108 C 292
——question of domicil and others on which divorce depends are governed by laws of forum, 108 C 292
——hence rule in Italy which prevents wife acquiring separate domicil nil sig., 108 C 292
——so Italian law as to what constitutes adultery, 108 C 292
State of domicil may grant for any cause allowed by its laws, even though it was not a ground for divorce in place where committed, 108 C 302
divorce secured in another State by resident of Connecticut temporarily there for that purpose will not be recognized here, 110 C 348
——recognized if plaintiff had actual bona fide residence there, 110 C 348
——sentence for nonsupport of wife properly rendered here in former case, 110 C 348
——one may acquire sufficient residence in State, though he went there to take advantage of its divorce laws, 110 C 351
whether cause of divorce exists is determined by law of domicil, 119 C 197
to constitute domicil residence at place chosen must be actual and there must be intention of remaining permanently, 119 C 612
——that place is person's domicil where he has voluntarily fixed his habitation, not for temporary or special purpose, but with present intention of making it his home, 119 C 612
——when party leaves domicil with intention of not returning, former domicil persists until new one is acquired, 119 C 612
——so man who left wife in Connecticut and went to Reno to get divorce, intending to stay there if he could find work, but not finding it left day divorce was granted, did not have bona fide residence there and Nevada court had no jurisdiction, 119 C 612
——wife entitled to judgment declaring decree invalid, 119 C 612
decisions of Supreme Court of United States de the giving of full faith and credit by one State where a spouse resides to decree of divorce obtained by other spouse in another State, reviewed, 128 C 628
decision of Florida court that husband had acquired residence in that State sufficient to comply with its laws concerning jurisdiction over divorce is binding on courts of this State, 128 C 628
——service of process on wife by ordinary mail, particularly where she entered special appearance and contested issue of jurisdiction, sufficient, 128 C 634

§ 3. Grounds

§ 4. ——Desertion

mere separation is not desertion, 43 C 318
——whether from necessity or inability to support, 43 C 318
desertion, 72 C 570, 84 C 591
payments to wife under order of court do not prevent claim of desertion, 72 C 570
desertion is unjustifiable cessation of cohabitation with intention not to renew it in spite of wish of other spouse, 84 C 591
facts *held* to show desertion, 84 C 591
situation may exist where it is necessary to have overture of renewal of marital relation in order to constitute desertion, 84 C 591
that one State allows divorce for a shorter term of desertion than does Connecticut is not against good morals, 88 C 690
consent to leaving prevents act from being desertion, 90 C 214
desertion implies nonconsent to separation; also no justification for it, 90 C 658
agreement not to live together construed; no bar for divorce for desertion, 91 C 608
decree of separation a mensa et thoro entitled to full faith and credit is a bar for action of divorce on ground of desertion, 91 C 608
decree of separation purely personal; no extraterritorial effect if other party does not appear or is not served, 91 C 608
what constitutes desertion, 97 C 490
abandonment by wife because of husband's refusal to permit her to keep her brother's infant child in their home *held* desertion, 104 C 152
desertion cannot be claimed if separation consented to at time or consent thereafter manifested by overt acts, 107 C 406
——but where originally against will of plaintiff, and he attempts reconciliation but fails, testimony by him that he does not now want his wife back will not defeat action, 107 C 406

——payments by husband to wife after separation to avoid nonsupport action do not show consent to separation, 107 C 406
desertion implies intent not to resume cohabitation, 110 C 277
——wife's absence though voluntary may be under such circumstances as will rebut this, 110 C 277
——circumstances not amounting to intolerable cruelty may justify her in leaving, 110 C 277
——what such circumstances are, 110 C 277
——judgment against wife in action for divorce in which she charged intolerable cruelty will not preclude her showing justification for leaving when sued for desertion, 110 C 277
statute de desertion contemplates separation for statutory period with design on part of one who has left not to resume cohabitation, 126 C 175
——mere refusal to permit marital intercourse alone does not constitute desertion, 126 C 175
necessary element in desertion is intention on part of absenting party not to resume cohabitation, 129 C 412
third condition in establishing desertion, "the absence of the other party's consent"; plaintiff's statement on trial that she was glad husband had gone not equivalent of consent, 129 C 704
——nor was her testimony that had he stayed she would not have continued to live with him evidence of consent at time of his leaving, 129 C 704

§ 5. ——Intolerable Cruelty

degree of cruelty required for, 17 C 193
——vulgar, obscene language without violence actual or threatened is insufficient, 17 C 194
unreasonable exercise of husband's authority is no ground for, 17 C 195
——improper, injurious exercise of his marital rights, 17 C 195
general finding of "no intolerable cruelty," negatives specific instances alleged, 43 C 274
intolerable cruelty; sexual intercourse unseasonably and brutally affected when dangerous to health of wife *held* to be, 61 C 234
marital rights and duties are imposed on both husband and wife, 61 C 234
intolerable cruelty as ground of, 70 C 420, 95 C 57
what constitutes intolerable cruelty, 97 C 693
——effect of conduct upon plaintiff is determining element, 97 C 693
existence of "intolerable cruelty" as ground for, is ordinarily a conclusion of fact for trier, 99 C 430
——only in exceptionally aggravated cases that this court will pass on the question, 99 C 430
——facts reviewed and *held* not such as to compel an affirmative conclusion, 99 C 431
——conduct of defendant impairing plaintiff's health not necessarily intolerable cruelty, 99 C 430
——when, only, intolerable cruelty should be found to exist, 99 C 430
conduct of wife is not intolerable cruelty if husband continues and desires to continue to tolerate it, 100 C 1
——what is essential to the existence of intolerable cruelty, 100 C 3
intolerable cruelty defined, 101 C 80, 422
unfounded charges of adultery as constituting intolerable cruelty, 101 C 80
——only when so made as to affect health or destroy marital relation, 101 C 80
conclusion of trier that facts did not constitute intolerable cruelty, *held* reasonable, 101 C 422
letter showing intimacy with another woman hearsay and irrelevant in action based on intolerable cruelty, 101 C 422
intolerable cruelty defined; conclusion that defendant not guilty of it, supported by subordinate facts, 102 C 755
refusal of husband to permit wife to keep her brother's infant child in their home *held* not intolerable cruelty, 104 C 152
what constitutes intolerable cruelty, 107 C 484
——is ordinarily a question of fact but is reviewable if logically or legally inconsistent with subordinate facts, 107 C 484
——conduct of wife *held* to constitute, 107 C 484
cases as to what constitutes intolerable cruelty cited, 110 C 696
intolerable cruelty; conduct and acts of defendant *held* not to constitute, 112 C 417
intolerable cruelty; unfounded charges of adultery persisted in that endanger plaintiff's physical and mental health so as to destroy objects of matrimony, constitute, 117 C 310
referee's conclusion of intolerable cruelty sustained; opprobrious names, vile language and false accusations, 118 C 291
must not only be proof of acts of cruelty but that cumulative effect rendered continuance of marital relation unbearable, 120 C 510
——though cruel acts may not be individually intolerable yet if they are manifestations of persistent cruel conduct they may in cumulative effect become unbearable, 120 C 511
fact that plaintiff left defendant and subsequently returned and lived with him not

conclusive that marital relation was bearable, 121 C 498
conclusion that plaintiff not entitled to divorce sustained, 123 C 218
where court found that defendant did not push plaintiff against mantel, its exclusion concerning bruises on back as result not harmful, 123 C 219
there must be proof not only of acts of cruelty but proof that in their cumulative effect upon other party they are intolerable so as to render continuance of marital relation unbearable, 123 C 219
——where case is predicated almost wholly upon conduct not constituting physical abuse, plaintiff's sensibility to suffering may be of great importance, 123 C 219
——so testimony concerning attempts at divorce from former husband, etc., properly admitted as bearing on extent conduct of defendant would cause plaintiff suffering, 123 C 219
——whether cruelty was ground of former divorce could be elicited from plaintiff on cross-examination; court records not essential, 123 C 222
use of speak-o-phone records, 123 C 222
refusal to have sexual intercourse not intolerable cruelty, 126 C 175
necessary proof to establish intolerable cruelty; hostile attitude, cessation of marital relations, etc., insufficient, 128 C 139

§ 6. ——Adultery

proof of adultery, inadmissible unless distinctly charged, 41 C 39
——inadmissible under charge of general misconduct, 41 C 39
——specifying acts of adultery under such charge does not help the case, 41 C 40
specifications of adultery charged should be definite as to time, persons and places, 41 C 40
connivance of wife in husband's adultery; power of court to prevent use of proceedings for immoral purposes, 68 C 186
if committee does not specifically find adultery, court cannot infer it, 85 C 390
amount of evidence necessary to prove adultery, 96 C 273
that evidence of adultery was secured by detectives and hired observers goes only to its weight, 108 C 293
adultery *held* established by the evidence, 108 C 292
as adulterous acts are naturally secret and clandestine, so proof thereof must usually be circumstantial and indirect, 120 C 161
——circumstances must be such as to lead the guarded discretion of a reasonable and just man to a conclusion of guilt, 120 C 161
——rule requires proof by fair preponderance of evidence, 120 C 161
——as in determination of any question of fact much must depend on good sense of trier, 120 C 161
——trial court's conclusion of adultery based on circumstantial evidence not disturbed, 120 C 161
defendant's plea of guilty before justice of peace court to charge of lascivious carriage properly admitted as tending to show inclination toward adultery, 120 C 161
in divorce action for adultery defendant in remonstrance should have stated that evidence of no sexual relations was not sufficient, because of presumption that children born in wedlock are legitimate, had she desired to press point, 124 C 447

§ 7. ——Miscellaneous

fraudulent contract is such only as renders marriage void ab initio, 1 D 114
corporal imbecility; petition must show permanent, incurable impotency, 8 C 167
petition must set out the false representations, 8 C 167
corporal imbecility; term does not import incurable imbecility, 8 C 167
——averment of nonintercourse insufficient, 8 C 167
habitual intemperance; question largely one of fact for trial judge, 68 C 186
cause must exist at time of trial; evidence as to conduct after bringing action admissible, 73 C 54
"fraudulent contract" as cause for, 78 C 242
unlawful relations between the parties before marriage does not prevent divorce on a ground of fraudulent contract, 90 C 399
fraudulent contract defined, 90 C 399
State's interest in marriage contract is such that it does not favor perpetration of fraud, 90 C 400
conclusion of trier that facts did not constitute habitual intemperance, *held* reasonable, 101 C 422
habitual intemperance must produce unreasonable want or suffering or disqualify husband from attending to his business, 101 C 425
fraud to vitiate marriage must relate to essence of marriage contract, 110 C 443
fraud by nondisclosure or suppression; necessity for request, occasion or circumstances imposing duty to speak, 110 C 443
defendant's failure to disclose insanity from which she thought herself cured *held* not ground for divorce or annulment, 110 C 443
perjury of plaintiff as ground to deny decree, 110 C 443
fraudulent contract; knowledge of incapacity for sexual intercourse and concealment of

this fact from other party necessary to constitute, 112 C 417

husband cannot complain of unchastity of wife when by reason of his own prenuptial intimacy with her he was aware of it, 114 C 7

misrepresentations of a wife as to her age, name and nationality not sufficient to establish fraud, 114 C 7

if marriage was induced by misrepresentation of epileptic as to physical condition divorce may be had on ground of fraudulent contract, 115 C 303

valid marriage may be dissolved only on grounds specified in statute and only in accordance with procedure established, 119 C 196

fraudulent conduct rendering marriage voidable distinguished from fraud which vitiates ordinary contract, 119 C 196

enumeration in statute of grounds of divorce is an exclusion of all other grounds, 119 C 200

determination whether there is ground for divorce to be made as of time of trial, 121 C 502

paranoia in finding *held* to mean no more than that defendant had obsession that plaintiff was unfaithful to her, and not such insanity as would be defense, 125 C 468

insanity at the time of commission of the acts constituting the ground of divorce is a full defense, 125 C 470

referee refused specifically to find defendant married with concealed intent not to have intercourse; existence of such intent a question of fact, 126 C 175

assault with intent to commit rape is an infamous crime, in violation of conjugal duty and punishable by imprisonment in state's prison, within meaning of statute making commission of such crime ground for divorce, 128 C 128

§ 8. Condonation and Revival

adultery is condoned by cohabitation after knowledge, 9 C 234

——conviction of husband for adultery is notice to wife, 9 C 235

offense, though condoned, revived by subsequent misconduct, 100 C 521

——and constitutes ground for divorce, 100 C 521

——intolerable cruelty after condoned adultery revives the latter, 100 C 521

condonation not annulled except by commission of offense furnishing independent ground of divorce, 101 C 422

after condonation cause of action not revived unless conduct of guilty party destroys its effect, 107 C 89

past offenses condoned by separation agreement *held* revived by subsequent conduct, 108 C 292

court's conclusion of condonation upheld, where plaintiff cohabited with wife four months after learning of her prenuptial unchastity, 114 C 7

plaintiff learned that wife had epilepsy after marriage but not that she had had it before and continued to live with her; *held* no laches or waiver of right to divorce, 115 C 303

condonation of offense should be pleaded as affirmative defense, burden resting on defendant to prove it, 123 C 409

what constitutes condonation of cruelty is question of fact, 123 C 409

cruelty as ground for divorce ordinarily cumulative; continuance of marital relations not necessarily condonation, nor concessions or reconciliation, 123 C 409

——court could infer from facts that acts claimed to constitute condonation were motivated by hope and expectation of better understanding, 123 C 409

interests of State as well as parties being involved in divorce action, court in its discretion may permit evidence of condonation, or, on its own motion, elicit such evidence, 123 C 411

facts found by committee did not prove condonation of intolerable cruelty as matter of law; is question of fact, 128 C 418

§ 9. Alimony; Allowances for Litigation

when allowed is recoverable from husband's estate, 1 R 349

court may decree alimony against nonresident; sufficient if nonresident has actual notice and appears by attorney, 5 D 357

alimony may be in money if division of estate be impracticable, 5 D 357

husband not liable for wife's legal expenses in procuring, 18 C 417

fact application for divorce connected with claim for custody of children does not render husband liable for cost of divorce action, 18 C 417

alimony defined, 21 C 197

how to be appropriated and set out, 21 C 197

how payment of alimony may be enforced, 21 C 196

application to enforce payment not affected by pending action of debt, 21 C 195

attorney has no legal claim on husband for defending wife on his petition for, 40 C 597

——only mode of securing payment is by order of court for allowance, 40 C 597

court has no power to assign portion of husband's property to a woman divorced for her own misconduct, 43 C 419

the receiving of a sum of money at the time of procuring, on an agreement that it is in

lieu of alimony or other demands is no bar to dower, 56 C 206
——even if part was paid after divorce, 56 C 206
a woman divorced without alimony retains right of dower under statute, 56 C 206
the law refuses to enforce a contract imposed upon wife by husband during coverture barring dower or alimony, 56 C 207
under statute court may order payment in money, though property consists wholly of real estate and division is impracticable, 58 C 327
nature of alimony, 77 C 34, 93 C 298
enforcement of decree for alimony by execution; agreement for deposit of sum for life use of wife, then over to children; accord and satisfaction, 80 C 609
judgment for alimony not a bar to subsequent action for debt due wife at time of divorce, 83 C 634
alimony not a debt, but allowed as means of support, 83 C 635
alimony discretionary with court, 85 C 478
in granting alimony, age, health, property, etc., of both parties considered, 85 C 479
order for alimony not interfered with unless discretion is abused, 85 C 479
contract to facilitate divorce is bad; not so in regard to amount of alimony, 87 C 377
evidence of value of husband's property *held* to be too remote to increase alimony, 91 C 219
divorced husband cannot refuse to pay alimony on the ground that he garnisheed himself, 93 C 296
alimony in husband's hands not a debt; not reached by wife's creditors, 93 C 296
creditor's bill to reach alimony, 93 C 301
order and amended order de payment of alimony did not affect attachment lien in suit for divorce, 94 C 280
whether attachment, made in a divorce proceeding where final decree ordered defendant to pay fixed sum in addition to weekly payment of part of income during former wife's lifetime, remained in force as security for weekly payments after payment of fixed sum, quaere, 96 C 568
evidence of acquisition of realty by defendant is admissible, 98 C 179
——alleged subsequent quitclaim deed, if not offered in evidence, is unavailing, 98 C 179
——function of court in passing on amount of alimony; title not in issue, 98 C 181
——refusal to reopen case to permit quitclaim deed to be offered, upheld, 98 C 183
alimony how determined; amount allowed *held* not unreasonable, 99 C 19
divorce decree that alimony include certain bills already contracted by wife, does not give creditors right of action against husband, 102 C 703
alimony not a debt; not attachable, 102 C 703
though court has no jurisdiction to grant divorce, it may order allowances to defend, 103 C 189
motion for allowance to defend appeal to Supreme Court should be addressed to Superior Court, 103 C 189
application for alimony pending appeal from judgment of divorce, 103 C 265
——if denied appeal may be amended to include ruling, 103 C 265
wife is privileged litigant; entitled to allowances as exigencies of case may demand, 104 C 152
upon motion for allowance, merits of case will not be passed on, 104 C 152
motion for allowance to prosecute appeal may be denied, in exercise of discretion, if appeal obviously without merit, 104 C 152
denial of allowance to prosecute appeal by wife not ordinarily open to review, 104 C 152
motion for allowance to prosecute appeal should be determined before, not after, outcome of appeal, 104 C 152
allowance to defendant wife for defense or appeal requires exercise of judicial function, 104 C 412
——power to make allowances continues pending appeal, 104 C 416
——Supreme Court cannot make such order, 104 C 412
Superior Court may order allowances during pendency of case, though it is without jurisdiction over the action; but not after action has gone to final judgment, 104 C 412
obligation of husband to support wife is foundation of alimony; remarriage of wife relieves divorced husband from alimony; rule applied to periodical payments; financial standing of second husband not relevant, 112 C 256
alimony is creature of statute; power of court to modify or vacate award, 112 C 256
life of order of New York court for alimony pendente lite *held* terminated by final divorce with no provision for alimony, 113 C 306
——and cannot be enforced in Connecticut, 113 C 306
regulation of amount of alimony payable under decree matter of discretion with court; will not be interfered with unless abused, 116 C 632
while judicially divorced defendant is permitted to remarry, remarriage does not affect or diminish husband's obligation to support former wife, 116 C 632
in determining amount regard should be had to estate, income, age, health and earning

capacity of husband and age, health, station and separate estate of wife, 116 C 632
liability to pay based upon duty of husband to continue to support wife whom he has, in legal effect, abandoned, 116 C 632
fact of remarriage and that salary of husband was reduced from $16,000 to $7000 does not, as matter of law, entitle him to modification of decree, 116 C 632
defendant is in no position to ask for modification of decree where he is in default in payments and no excuse for the default appears; same rule holds in case of appeal, 116 C 632
——but plea in abatement or motion to dismiss not proper remedy, 116 C 632
——motion for stay until payments made proper, 116 C 632
defendant claimed certain conveyances were made by defendant to plaintiff in consideration of agreement by latter not to claim support for self or child; finding of court that no such agreement was made sustained, 121 C 498
amount to be awarded as alimony rests in discretion of court, 121 C 498
——award of $7500 as alimony, slightly more than one-fourth of defendant's estate, not excessive, 121 C 498
basis of allowance for expenses of litigation is that wife shall not be deprived of rights for lack of funds, 121 C 498
——if she has available property of own, she is not entitled to allowance, 121 C 498
——but where wife's property was not in liquid form court did not err in making allowance, 121 C 498
decree of alimony, where award is not within power of court to rescind or alter and has become vested, falls within full faith and credit clause of Constitution, 122 C 155
——constitutional provision requires only that the courts of other States give effect to it by ordinary remedies appropriate to action on judgment, 122 C 155
——not required to apply any special remedies of State where decree rendered, nor any such remedies provided by their own laws to enforce similar decrees, 122 C 155
——whether court in which enforcement is sought will apply equitable remedies depends on principles of jurisprudence in that State, 122 C 155
——that State has social and financial interest not sufficient ground to justify extension of equitable remedies, 122 C 155
though divorce with its incident of alimony is creature of statute, relief given is essentially equitable in its nature, 122 C 155
——peculiarly true here where decree of alimony in earliest form consisted of assignment of specific property, 122 C 161
——and fact that both equitable and legal rights have come to be administered by single court does not change nature of decree, 122 C 155
action brought upon decree in equity may be brought in court of equity, and this is not prevented by fact that action may lie at law on decree in equity simply for payment of money, 122 C 155
——it was therefore proper for plaintiff to invoke equitable jurisdiction of Connecticut to enforce New York decree for alimony, 122 C 156
——power of court to enforce decree by proceedings in contempt is inherent in authority of court to compel obedience to its orders and is equally applicable to equitable proceeding brought here to enforce decree of alimony rendered in another State, 122 C 156
——plaintiff entitled to order for payment of past due instalments enforceable by contempt proceedings, 122 C 156
——but not as regards instalments due in future, as to which New York has power to amend or vary the decree, 122 C 156
demurrer addressed generally to prayers for relief and not specifically to prayer seeking order directing payment of future instalments should have been overruled, 122 C 156
default of defendant does not, in itself, entitle plaintiff to at least some alimony, 123 C 564
duty of court to determine from amount of estate of husband, income, age, health, earning capacity, etc., whether alimony shall be paid and amount thereof, 123 C 564
——statute does not require that alimony be allowed in all cases or that it be ordered payable from income in all cases when husband has no estate, 123 C 564
——contention that though defendant had no estate court should have made nominal allowance from income in order to preserve its right to modify judgment if circumstances changed. overruled, 123 C 564
court could consider fact that shortly after separation, defendant conveyed to plaintiff his interest in real estate and in consideration plaintiff agreed to waive all future claims against him for support, 123 C 564
denial of defendant's motion for counsel fees, alimony pendente lite, and support of child not abuse of discretion, 124 C 446
our courts have equitable jurisdiction to enforce decree for alimony by courts of another State, 125 C 84
——nature of proceedings brings it within proper field of equitable remedies, 125 C 84
——decree granting relief none the less equitable because it is sought in form of money

payment; would be enforced by contempt proceedings, 125 C 84
——equity court may, however, if specific remedy claimed is inappropriate, render judgment simply for damages, 125 C 84
——as where defendant would not be able to perform act ordered, for court of equity will not make decree it has no power to enforce, 125 C 84
judgment decreeing that defendant pay plaintiff alimony due her under order of New York court set aside, where court took into consideration statement in report of committee in earlier case as to untrue testimony of defendant as bearing upon credibility, 125 C 85
judgment should not provide that if alimony not paid attachment for contempt be issued, 125 C 91
——such contempt proceedings would be for failure to obey decree and they should not be brought until such failure occurred, 125 C 91
modification of decree; usual grounds change of financial condition or misconduct, but these not exclusive, especially where payments are for benefit of children as well, 125 C 339
——death or material change in needs of child is ground; alteration to afford more effectual control and guidance equally available, 125 C 339
conflict of authority as to whether decree based on contract can be modified, 125 C 339
——but where no contract confirmed by court but merely stipulation requesting certain provisions be incorporated in judgment, it is open to modification, 125 C 339
provision that after decease of defendant, plaintiff should be paid $400 per month until death, not alimony, 125 C 343
——but being separable from other provisions which were by way of alimony and allowance for support of children, latter could be modified, 125 C 339
court did not abuse discretion in granting allowance to prosecute appeal where record showed proper grounds for appeal, 125 C 465
——whether or not appeal is meritorious is important and controlling consideration, 125 C 466 (footnote)

§ 10. Disposition and Support of Children

transfer of guardianship does not release parent from liability for support, 3 D 37
settlement of child not affected by award of custody, 2 C 20
effect of divorce on parents' responsibility for support of children, 22 C 417, 35 C 541
compromise on suggestion of court does not affect gift to children under it, 36 C 181
application for custody of children not an independent proceeding; incidental to original action; continues indefinitely, 83 C 479
court not ousted of jurisdiction by removal of children from State to live with parent in whose custody they have been given, 83 C 479
welfare of children paramount consideration in granting custody; discretionary, 83 C 479
that order of custody does not conform to petition or cross-petition is immaterial, 83 C 479
order requiring children to be sent back and forth across ocean not abuse of discretion, 83 C 479
effect of order de children in foreign countries, 83 C 479
in order for custody, court can prescribe care and education involving absence from State, 83 C 480
order of custody has no extraterritorial force; more theoretical than practical, 83 C 480
notice of proceedings not absolutely necessary, 83 C 485
power of court as to children under statute can be exercised only as ancillary to power as to divorces, 97 C 440
——not in an independent action; history of statutes, 97 C 444
power of Superior Court as to custody of children; its discretion, 99 C 154
——decree does not affect guardianship of child, 99 C 154
if court has no jurisdiction to grant divorce, it may not make orders relative to custody of children, 103 C 189
award of $3000 for support of child to cover her needs for five years not excessive, 121 C 498
statute that parent of minor child shall not receive or use property of latter over $100 unless appointed guardian, not applicable to allowance for support in divorce action, 121 C 498
——court may order mother to give security for proper use of money placed in trust, 121 C 504
where defendant had threatened to leave country, award of lump sum justified, 121 C 498
denial of defendant's motion for support of child not abuse of discretion, 124 C 446
modification of decree; usual grounds change of financial condition or misconduct, but these not exclusive, especially where payments are for benefit of children as well, 125 C 339
——death or material change in needs of child is ground; alteration to afford more effectual control and guidance equally available, 125 C 339

provision that after decease of defendant, plaintiff should be paid $400 per month until death, not alimony, 125 C 343

——but being separable from other provisions which were by way of alimony and allowance for support of children, latter could be modified, 125 C 339

§ 11. Property Settlements Prior to or Pending Divorce Proceedings

contract for support of wife on condition that she bring divorce action at husband's expense and under his control, concealed from court, is void, 4 D 350

compromise agreed upon during trial at suggestion of judge to the effect that opposition to divorce be withdrawn and property conveyed to children, *held* not to be collusive or illegal, 36 C 181

agreement concerning alimony to facilitate divorce is void, 46 C 21, 56 C 207

courts will not enforce any contract which is the price of a consent to a divorce, 56 C 206

——agreement that she will not ask for alimony and that certain sum shall be paid her by husband, invalid, 56 C 206

contracts for purpose of facilitating divorce are contrary to public policy, 87 C 377

——but a noncollusive agreement de alimony in case in foreign court and valid there may be enforceable here though it might have been held otherwise had contract been made here, 87 C 377

conveyance from husband to wife when made not to facilitate divorce but solely as amicable settlement in view of divorce proceedings already instituted or determined upon, not necessarily void unless concealed from the court, 119 C 613, 121 C 281

——so where wife received deed by way of settlement before husband left for Nevada to get divorce, there was no collusion, 119 C 613

contracts between husband and wife in settlement of property affairs in view of divorce proceedings are enforced by action on contract itself, and remedies are same as in any breach of contract, 127 C 510

——such contracts not necessarily contrary to public policy and void, unless concealed from court, 127 C 514

where court has general power to modify decree for alimony or support, exercise of that power not affected by fact that decree is based on agreement entered into by parties, 127 C 510

DOCKET

§ 1. In General; Discontinuance and Restoration
2. Erasure
3. ——In General
4. ——When Motion Granted

Note: This title does not include motions to erase in Supreme Court, for which see Appeal to the Supreme Court § 49(1)

See also Jurisdiction

§ 1. In General; Discontinuance and Restoration

motion to restore; refusal not ground of appeal; suspends time for appeal, 64 C 535

motion to restore at subsequent term, where case is discontinued at annual call; procedure, 76 C 293

if case is wrongly restored, motion to erase is proper, 76 C 293

motion to restore "entire case," after plaintiff has withdrawn it, on filing of counterclaim, 80 C 218

judgment striking case from docket is final judgment terminating rights of parties to proceed with action, 120 C 120

motion to restore case struck from docket is like motion to reopen judgment, 120 C 120

——decision upon it is not basis of appeal but it may postpone limitation of time within which appeal from judgment striking case from docket must be taken, 120 C 120

striking case from docket is exercise of judicial function and as such can be done only after notice and an opportunity to parties to be heard, 120 C 120

——a hearing upon a motion to restore case to docket not sufficient, 120 C 120

on June 4, 1934, clerk of Court of Common Pleas sent counsel notice that all cases returnable prior to July, 1932, would be stricken from docket June 22, without further notice, unless counsel or parties filed stipulation that case remain on docket; so striking case from docket *held* erroneous, 120 C 120

order discontinuing case is final judgment, 121 C 379

granting of motion to restore case to docket not final judgment from which appeal lies, 123 C 166

where case withdrawn, either after commencement of hearing "by leave of court

for cause shown," or voluntarily without such permission, case is still in court, though removed from docket of active cases, 123 C 166

court has jurisdiction upon proper showing to restore to active docket case which has been voluntarily withdrawn, just as it can open judgment or restore to docket case which has been erased, 123 C 166

——but, for same reasons as in latter two situations, such restoration may not be made after expiration of term at which withdrawal was filed, 123 C 166

where plaintiff moved restoration of case to docket at term subsequent to its withdrawal, defendant, by contesting motion on its merits, waived any lack of jurisdiction on part of court, but did not waive right to claim action of court in granting motion erroneous, 123 C 166

——remedy of plaintiff, if any, was by petition for new trial or by proceeding in equity, 123 C 166

§ 2. Erasure

§ 3. ——In General

motion to erase in criminal cases is a motion to quash, 19 C 484, 498

power to erase should be cautiously exercised, 19 C 484

where ground of motion to erase is matter of plea, an issue must be formed, 20 C 525

party appealing case to court may move to erase, 23 C 176

motion to erase based on irregularity of judgment below; presumptions, 34 C 116

order erasing may be revised on error, though it does not appear who made the motion, 34 C 185

order de erasure is a "final judgment" only for purposes of review on error, 35 C 102

motion to erase after judgment has been affirmed by Supreme Court is too late, 35 C 221

motion to erase is in the nature of plea in abatement, 36 C 351

——rules governing time for filing pleas in abatement apply to motion to erase, 36 C 352

erasure of appeal in appellate court revives judgment appealed from, 39 C 484

judgment by justice that fine be paid town treasurer; if erroneous, is cured by appeal, 39 C 562

case not legally removable is not erased from docket by merely going through form of removal, 54 C 32

motion to dismiss cannot allege new matter, 82 C 136

erasure from docket for want of jurisdiction does not carry costs, 82 C 483

allowance of motion to erase is appealable; should be entered of record, 82 C 483, 84 C 24

motion to erase for lack of jurisdiction admits well-pleaded facts, 84 C 25, 40

it cannot be determined whether a layout is unreasonable on a motion to erase unless a plan of location is submitted, 84 C 25

appeal from motion to erase is taken within ten days, but time may be deferred for certain causes, 92 C 649

motion to erase is addressed to facts of record solely, 92 C 649

motion to dismiss and for nonsuit as its equivalent, 97 C 399

ground for motion to erase not "admitted" by pleadings, as asserted in motion; denial of motion not therefore erroneous, 98 C 397

no costs allowable on motion to erase, 107 C 281

motion to erase or dismiss for want of jurisdiction is decided on face of record, 111 C 663

——former is preferred form, 111 C 664

——it admits all facts well pleaded, 111 C 663

——no further pleadings should be made and demurrer to it should be stricken out, 111 C 663

——decision on motion is final judgment, 111 C 663

§ 4. ——When Motion Granted

case erased for want of jurisdiction discovered after jury was impaneled, 1 R 458

defective service of writ of error is no ground for motion, 2 D 552

motion to erase lies only for defects apparent on face of proceedings, 19 C 484, 498, 20 C 525, 36 C 351

tender of debt and costs to appellant does not vacate appeal, 20 C 525

court will strike void appeal from the docket, 21 C 531

duty of court to erase on discovery of want of jurisdiction, 23 C 176

scire facias defectively signed; defect waived by plea and lapse of time, 34 C 182

erasure allowed where process is void or record discloses no jurisdiction, 35 C 326

——if process be only irregular or defective, the objection must be raised by plea, 35 C 325

erasure allowed at any stage if record discloses want of jurisdiction, 38 C 455, 39 C 308

that the action will not lie for the purpose alleged is no ground for motion, 41 C 322

February term, 1874, has no jurisdiction of writ dated December, 1873, returnable February, 1873; case may be erased on motion, 41 C 540

motion to erase allowed where amount in demand, as appears from counts, is too small, even after judgment and though damages claimed are sufficiently large, 45 C 95
writ with no ad damnum clause may be erased, 47 C 20
an appeal taken from judgment of respondeat ouster on demurrer overruled may be erased, 48 C 370
that appeal papers in criminal case were not filed until one-half hour after opening of court *held* no reason for erasure, 59 C 170
case not appealable from Probate to Superior Court should be erased from docket, 61 C 380
case not to be erased unless want of jurisdiction is clear, 70 C 326, 71 C 651
——where it does not appear whether appeal is taken under act permitting it or under one not permitting it, appeal should stand, 70 C 326
case will be erased where jurisdictional facts are wanting, 72 C 435, 79 C 47
case will be erased where defect appears on face of papers, 73 C 314
want of jurisdiction must clearly appear on face of record, 82 C 483, 84 C 24
case not erased merely because there is some evidence that cost of land exceeded limit of court's jurisdiction, 83 C 110
motion to erase granted when appellant alleges want of jurisdiction clearly, not when he simply says he is aggrieved, 84 C 25, 40
motion to dismiss comes too late after issue joined; should not determine merits of action, 85 C 529
motion to erase for lack of jurisdiction, if good, should be granted whenever made, 90 C 293
——is proper in case of attempt made to file substitute complaint where there is no valid original, 97 C 399
motion to strike from record, not erase from docket, is proper remedy where wrong party plaintiff, 91 C 680
motion to erase lies only for defects apparent on face of papers; does not lie after judgment of default has been entered, 97 C 123
erasure proper where attempt to bring action is by service of writ without complaint, 97 C 399
a writ without a complaint is a nullity and cause should be erased, 98 C 229
proper method to secure dismissal for lack of jurisdiction apparent on face of pleadings, 98 C 232
case must be dismissed whenever want of jurisdiction appears, 101 C 356
no appeal lies from denial of motion of rehearing in compensation case; such an appeal is properly erased from docket of Superior Court, 101 C 356
motion to dismiss or erase not proper way to attack appeal where proof of facts is necessary or defect is in way in which appeal is taken, 104 C 352
——as in not having been taken in time allowed, 104 C 352
appeal from probate may be erased from docket when, on face of record, no right of appeal exists, 105 C 595
proper where appeal from probate fails to state interest of appellant in matter, 106 C 583
——decision is final judgment, 106 C 601
——motion to be granted only in clear case, 106 C 601
appeal from probate must be erased from docket when want of jurisdiction is apparent on face of record, 107 C 281
motion not aided by inference or intendment and only granted where want of jurisdiction clearly appears, 108 C 436
——is decided upon facts of record alone, 108 C 436
——motion to erase case against corporation on ground that it had dissolved, accompanied by certificate of dissolution insufficient, 108 C 436
not proper way to raise issue of res adjudicata, 111 C 665
motion does not lie as regards appeal from probate for want of interest in appellant where such interest might appear on probate records, 112 C 459
——it would be necessary to negative this, 112 C 459
motion to dismiss does not lie where question is sufficiency of allegations for rehearing of mandamus to compel attorney general to seek removal of public utilities commissioners, 112 C 586
where want of jurisdiction appears on face of record, motion to erase rather than plea in abatement correct procedure, 114 C 582
where appeal from decree is taken as administrator, appellant not required to set forth interest further; since claimed interest sufficiently appears of record, no proof required, and motion to erase appropriate remedy, 117 C 202
for late citation of representative of deceased defendant, 120 C 111
defendant's counsel moved to erase case from docket after it had been restored at term subsequent to rendition of judgment discontinuing case, counsel appearing as "its attorney for this motion"; *held* appearance did not waive court's lack of jurisdiction, 121 C 377
——court properly held judgment restoring case to docket should be set aside and case erased, 121 C 377

DOCKS

See Waters

DOGS

See Animals § 2

DOMICIL

See Divorce § 2; Jurisdiction § 2; Paupers; Residence and Domicil

DOWER

§ 1. In General
2. Property Subject to Dower
3. Release or Bar of Dower

§ 1. In General

statute compelling tenant to repair construed; extends only to dower assigned under statute provisions, K 20

widow's right to dower paramount to that of creditors or heirs, 1 R 228

action of waste lies against tenant in dower, 1 R 323

assignment of dower not necessary to enable widow to enter, 2 R 50, 5 C 464

widow becomes tenant in common with heirs on husband's death, 5 C 464, 38 C 257

a legacy to a widow *held* presumed to be a bounty, 23 C 331

appeal lies from decree accepting report of distributors of dower, 34 C 492

widow entitled to benefit of improvements by reversioner before assignment of dower, 34 C 493

——conduct *held* not to estop widow claiming same, 34 C 494

Probate Court alone has jurisdiction to assign; may be distributed in part and balance assigned at a future time, 42 C 53

liable to be taken on execution for widow's debts before assignment, 42 C 375

in determining whether it be due equity follows legal rules, 46 C 19

setting out of dower conveys no title, 53 C 36

in setting out dower court should be satisfied that applicant possesses statutory requisites, 53 C 36

in setting out dower, widow may be given property most advantageous to her, under statute, 56 C 580

——where there are several pieces of land, dower may be set out wholly in one, 56 C 581

——where portion of property is incumbered, may be set out in unincumbered piece, 56 C 581

——where estate consists in part of mere equity in redemption, equity must be valued as such in setting out, 56 C 581

statutory requisites stated in §§ 618, 621, 622, Rev. 1888, 63 C 337

a decree of Probate Court setting out dower, unappealed from, is conclusive as to the possession of applicant, 63 C 338

Probate Court may have jurisdiction over matters that would in equity bar dower, though concurrent with Superior Court, 63 C 340

——but where after legal right to dower has attached it becomes inequitable for widow to take, Probate Court has no jurisdiction; must leave parties opposed to assignment to their remedy in a court of equity, 63 C 349

Probate Court may refuse to set out dower if inequitable, though statutory requisites exist, 63 C 348

——should not refuse in a fairly doubtful case, 63 C 348

——where Probate Court sets out, in such a case its decree is not an estoppel; party interested and aggrieved may appeal to court of equity, 63 C 349

——appellate court should decide on the facts and its decree should conclude all parties on any question, 63 C 349

allegation of need of property "to pay debts," and that claim of widow "clouded the title" *held* sufficient to maintain injunction by executor against application for dower, 63 C 351

——insolvency of the estate and deficiency of assets may be shown by other evidence than decree of Probate Court, 63 C 354

history of legislation de, 72 C 148

effect of divorce and remarriage, 72 C 148

dower is favored, 75 C 601, 78 C 484

statute requiring widow to maintain and repair does not require her to construct, 84 C 202

failure to repaper and paint interior makes widow liable for waste, 84 C 202

court *held* to have gone too far in establishing widow's general, unassigned dower interest as a permanent estate in specific realty on the facts found, 84 C 216

Superior Court in action to quiet title cannot assign dower; cannot limit it to any particular estate, 84 C 216

——can give her one-third of income pending determination of title, 85 C 434

widow has an estate that vests at once on husband's death without assignment, 85 C 434

——she becomes a tenant in common with those who succeed to husband's real property, 85 C 434

——granting one-third of income not an assignment of dower; it is merely determining character and extent of her interest as tenant in common, 85 C 434

before assignment of dower, wife is tenant in common of real estate with heirs; but if she holds possession exclusively for fifteen years, she may acquire a fee, 90 C 133

§ 2. Property Subject to Dower

dower reaches only to lands husband was seized of at death, 1 R 50

widow takes dower in equity of redemption, 1 C 559

A, tenant in tail general of estate, conveyed it in fee simple, for consideration, to B, who leased it back to A on same day for life; at A's death issue in tail entered; *held* A's wife had no right to dower, 4 C 179

dower defeated by testamentary deed delivered to depositary, 5 C 321

widow entitled to dower in land conveyed to her husband by his father in consideration of support during life, though no support furnished, 6 C 458

no dower allowed, where husband holds as mere trustee or mortgagee, 17 C 555

no dower in a leasehold for nine hundred and ninety-nine years with annual rent, 33 C 318

devise to wife not in lieu of dower is to be excluded in computing, 33 C 319

——direction to sell estate to pay mortgage; residue to heirs; wife does not share in residue, 33 C 320

right to dower exists on marriage and rests upon whole estate; an assignment merely designated particular portion on which it shall rest, 53 C 36

widow entitled to dower in equity of redemption under statute, 56 C 581

——rule for setting out dower in, 56 C 582

——English rule not adopted in this State, 56 C 582

sale of equity subject to dower; dower right in avails, how valued, 56 C 582

——where one of several pieces of land is mortgaged for more than value, excess is not to be taken out of other equities, 56 C 585

dower in proceeds of real estate in hands of administrator, 66 C 410

conveyance intended to deprive unfaithful wife of dower is not fraudulent, 72 C 271

dower may exist in equitable remainder, 73 C 106, 75 C 601

statute construed as regards word "possessed," 73 C 113

where testator created trust for certain length of time and then property to go to L and his children, and L died after testator but before termination of trust, L's wife had no interest in testator's property, but is entitled to statutory share of that which goes to husband's estate, 73 C 304

dower a life use attaching primarily to all real estate husband died seized of; can be terminated as to any part by an assignment of dower by Probate Court, 84 C 216

in intestacy, realty vests in children subject to wife's dower, 91 C 12

dower of life use of husband's real estate applies only to land in Connecticut, 110 C 36

§ 3. Release or Bar of Dower

wife absent from husband at his death against his consent and by her default is not entitled to dower, 2 R 469

right of dower not barred or lost by lapse of time, 6 C 458

antenuptial and ancillary agreement *held* no bar of dower; will be enforced by equity, 8 C 84

what amounts to a good and equitable jointure in lieu of dower, 8 C 85

assent to beneficial provision in lieu of dower is presumed, 21 C 156

——wife's title to such share is perfect on assent of executors, 21 C 156

——assent of executors, how shown, 21 C 156

devise or legacy in lieu of dower does not contribute to payment of debts, 23 C 330, 26 C 263

——widow takes as purchaser, 23 C 330, 52 C 321

by antenuptial contract B agreed that stocks should be held in trust for L, in lieu of dower and share in his personal property; *held* her rights in stocks not affected by husband's conversion of dividends or by clause in his will leaving her house and money, 40 C 169

election of testamentary provision is not required unless will clearly shows it was given in lieu of dower, 42 C 276, 46 C 20
——this intent may be implied in clear cases, 42 C 276
——as where dower claim would defeat other provisions of will, 42 C 277
cannot be barred by agreement during coverture, 46 C 20
not barred by agreement of innocent wife to waive claim for alimony in divorce suit, 46 C 20
acceptance of provision of foreign will in lieu of dower bars right to dower here, 49 C 424
——where record shows that such provision has been carried into effect, 49 C 425
wife may withdraw declination of provisions in will in lieu of dower, especially before any order of distribution, 51 C 439
life use of entire estate by will is of necessity in lieu of dower, 51 C 440
bequests to widow in lieu of dower, widow takes as a purchaser; will not abate pro rata with other legacies unless so provided in will, 52 C 321
——to be paid before other legacies, 52 C 322
where widow allowed lands to be sold as unincumbered, and so told purchaser *held,* Probate Court could not consider question of estoppel on application to set out dower, 53 C 36
the receiving of a sum of money at the time of procuring a divorce on an agreement that it is to be in lieu of alimony or other demands, *held* no bar to recovery of dower, even if part was paid after divorce was obtained, 56 C 206
a wife divorced without alimony retains right of dower under statute, 56 C 206
the law refuses to enforce a contract imposed by husband upon wife during coverture, barring dower, 56 C 207
whether antenuptial contract as a settlement is such as to bar dower under statute, quaere, 59 C 584
——but *held* claim of dower was relinquished by terms of contract and wife could not have benefit of both contract and dower, 59 C 586
——and where widow presented claim against the estate under the contract, *held* she elected to take by it and could not afterwards claim dower, although dower may not have been barred by contract, 59 C 586
assignment in bankruptcy by donee is tail does not bar dower, 66 C 411
abandonment by other spouse under statute is question of fact whose determination by trial court is conclusive, 90 C 210

DRAINS AND DITCHES

See Fences; Sewers; Waters

DRIVING UNDER INFLUENCE OF LIQUOR

driving under influence of liquor established by proof that accused, through consumption of liquor, had become so affected in mental, physical or nervous processes that he lacked to appreciable degree ability to function properly in operating automobile, 108 C 209
driving under the influence of liquor; "operation" where car is disabled, 125 C 399
evidence that defendant was intoxicated when found in middle of front seat of stationary automobile insufficient to support conviction of driving under influence, 129 C 483
——court could not use inference arising from failure of accused to testify to supply deficiencies in state's evidence, 129 C 484

DUE PROCESS OF LAW

See Constitutional Law § 5

DURESS

See also Bills and Notes § 14; Contracts § 7; Fraud § 9; Undue Influence; Wills § 6

note obtained by duress is not within statute de usury, 1 R 115
the law knows of no duress by mere advice, direction, influence and persuasion, 1 C 356

lawful arrest and detention without abuse of process is not duress, 21 C 431
proper charge as to what constitutes, 21 C 431
note for just debt, void for duress; recovery may be had on original claim, 23 C 68
equity will not foreclose mortgage obtained by threats of criminal prosecution against relative of mortgagor, 46 C 195
bill of particulars under common counts for money paid, had and received, *held* insufficient, 50 C 549
must be specially pleaded under Practice Act, 50 C 550
where money paid under duress is what ought to have been paid voluntarily, plaintiff has no standing in law or equity, 50 C 550
lawful imprisonment does not constitute, 61 C 55
equity will relieve from a contract, especially for surety, obtained under such pressure as to deprive party of free agency, 63 C 105
——will refuse to aid party claiming under contract and will declare contract void, 63 C 105
demand for payment and threat to sue as duress; should be pleaded, 71 C 188
solicitation does not constitute, 76 C 136
what constitutes duress is a matter of law; existence of duress one of fact, 81 C 532
threat of suit does not constitute, 82 C 230
test is not the means employed to secure execution of contract, but the state of mind induced on the defendant, 84 C 378
——facts *held* not to support duress, 84 C 378
tax payment made under protest is made under moral duress, 92 C 199
act must be both calculated and intended to coerce, 92 C 297
party paying more than was really due in settlement of claim in order to avoid attachment cannot recover excess as due to duress, 97 C 129
due process of law, used in good faith and fairly, cannot constitute duress, 97 C 129
claim that contract was procured by duress not available on appeal, if no such issue was presented in the pleadings, 98 C 576
what constitutes payment under duress, 100 C 617
payment of illegal demand with full knowledge of facts, not duress in absence of immediate, urgent necessity, 100 C 617
payment of invalid mortgage not under duress, where made only in order to accept favorable offer to sell, 100 C 617
payment "under protest" does not establish duress, 100 C 621
payment of mortgage under threat of foreclosure, 101 C 470
mortgage for fees, obtained by attorney from ignorant and illiterate client in state of great fear, *held* void for duress, 107 C 229
voluntary payment with full knowledge of facts and without immediate or urgent necessity therefor cannot be recovered, 108 C 47
payment of tax made under mistake, fraud or duress or under protest cannot be recovered under claim that act was invalid, 115 C 554
inherent in duress that acts or threats claimed to constitute it should be wrongful, 124 C 92
where defendant would not release second mortgage unless interest were paid in amount plaintiff thought too large, honestly believing she was entitled to this amount, no duress, though plaintiff might be foreclosed by first mortgagee unless she secured release, 124 C 92
where one insists on a payment which he honestly believes he is entitled to receive, certainly unless that belief is without reasonable ground his conduct is not wrongful and does not constitute duress, 124 C 95

DYING DECLARATIONS

See Evidence § 77

DYNAMITE

See Negligence § 7; Nuisance

EASEMENTS

§ 1. In General
2. Creation and Existence
3. ——In General; By Express Grant, Reservation or Covenant
4. ——By Prescription
5. ——By Implication

6. ——By Necessity
7. ——Equitable or Negative Easements
8. Termination; Abandonment
9. Extent of Right or Use; Location
10. Transfer of Rights; Appurtenances

See also Deeds § 13; Party Walls; Waters § 12

§ 1. In General

one having clear right of way may remove obstructions, 29 C 373

——need not wait to sue in covenant; need not be actually using way at the time, 29 C 373

damages recoverable only for injury to, where defendant owns the fee, 42 C 164

——setting water back on plaintiff's reservoir, 42 C 165

right to use water from spring; sale of spring; injunction lies for interference, 45 C 415

injunction lies for infringement of right to lateral support, 52 C 198

an easement might exist against grantor where it would not as against grantee without notice, 54 C 100

grant of land with right to use well on land of grantor, grantee to pay one-half of repairs; *held* the fact that grantee had previously paid for more than one-half the repairs was no defense to suit by assignee of grantor for one-half the repairs, 56 C 358

——grantor not bound to make repairs and therefore grantee can have no claim against him, 56 C 359

tenant at will can maintain suit for obstruction of, by wrongdoer, 56 C 368

——though easement be an incorporeal right, 56 C 368

a reservation of right of way over railroad to wharf, *held* not a personal easement but one for the benefit of owners of wharf lot, 62 C 203, 208

——railroad has no right to raise track so that owner of easement cannot easily cross, 62 C 208

——where deeds provided a certain level for rails, *held* provision was an agreement of grantee to keep tracks at that level, 62 C 208

right of support for land distinguished from party wall; liability for changes in such wall, 66 C 344

bars as an incumbrance to way; whether acts de, gave right to maintain them a question of fact, 67 C 279

while nature and location of land over which passway is granted, may be regarded in determining purpose of grant, such evidence cannot qualify right of grantee to unrestricted use given by unambiguous instrument, 67 C 279

one who buys land with knowledge of right of way over it may be compelled to recognize it, 72 C 199

grantor not liable for obstruction unless he prevents its removal, 72 C 628

duty of landowner to one lawfully using way over land, 78 C 170

where way is granted partly covered by division wall, rights on removal of wall; Statute of Limitations; injunction proper remedy against encroachment on way, 79 C 454

who may remove obstruction; owner of servient estate cannot maintain it on ground that use of dominant estate is one not authorized, 80 C 290

lease of water privileges is technically a chattel real, practically a fee defeasible upon failure to perform certain conditions, 82 C 102

work done to protect foundation on adjoining lot; *held* implied agreement to pay therefor, 82 C 126

excavations cannot be negligently made, 82 C 519, 94 C 167

a private passway defined; bounding on, does not carry to the middle, 82 C 567, 84 C 429, 87 C 31

understanding of neighborhood inadmissible to establish title to private right of way, 83 C 500

open and visible use of easement is notice to purchaser, 83 C 595

owners of land to which way is appurtenant can keep it open, 84 C 429

easements not taxable as land, 85 C 119, 127

restraining order did not forbid use of gates easily opened and shut, 85 C 190

persons not occupants of a building *held* not entitled to use right of way, 85 C 545

description of passway across lot sixteen feet wide *held* too uncertain where none was in fact in use, 85 C 545

declaration of decedent as to right of way excluded if it did not refer to the place in controversy, 86 C 275

owner not presumed to have fee to middle of right of way, 87 C 31

a well may be built on a right of way if it does not interfere with the use as a way, 87 C 617

owner of right of way adjacent to his land does not necessarily own to the center of the right of way, 87 C 618

right and duty of railroad under contract permitting it to lay spur track over private land; employee injured by obstruction cannot sue landowner, 89 C 606
owner of right of way must keep it in repair; landowner not liable for injuries received on it, 89 C 606
duty of adjoining land to receive surface water, 90 C 108
declaration of decedent that a passway is a mere license is inadmissible, 90 C 241
use may originate in a void conveyance, 90 C 241
estoppel by giving deed as executor reciting other rights of way but not his own, 90 C 241
care required in case of building with wall on division line, 94 C 167
trespass; two fold claim of defendants; highway and private right of way, 98 C 413
——new trial granted limited to issue of private right, 98 C 413
are not taxable apart from their dominant estates, 101 C 383
liability of one who invited public to use premises as public way, 102 C 396
——statute de defects in highways does not apply, 102 C 396
that purchaser observed cindered pathway, not sufficient to charge him with notice of right of way over it, 103 C 285
servient owners may exercise all rights of ownership consistent with existence of easement, 104 C 139
where complaint relies on private right of way, relief cannot be had on basis of interference with rights in highway, 104 C 389
generally, owner of servient estate under no duty to keep way in repair, 106 C 464
rule that owner of servient estate not obliged to repair not applicable where he has been directed by injunction to remove obstruction and fails to do so, 106 C 464
——owner of right of way may recover for injuries due to this failure, 106 C 464
——that plaintiff's husband partly removed obstruction of no consequence, 106 C 464
obstruction of right of way as nuisance; liability for failure to obey injunction to remove it, 106 C 467
when building restriction does not run with land, basis of holding that grantee who takes with notice is bound, is not easement but equitable principle, 107 C 109
claims of parties to right of way over twenty-five foot strip between their respective properties considered, 107 C 252
order directing removal of wall and shrubbery partly obstructing way upheld, where party claimed right by ownership of fee and court found against him, 107 C 264
revocable license does not become irrevocable by mere expenditure of money, 107 C 656
right to enforce covenant as to building restrictions as an easement, 108 C 359
——where land subject to them is wanted for public improvement, taking will not be enjoined, but compensation must be made, 108 C 359
——measure of damages, 108 C 359
——general development scheme; finding that vicinity was still residential though type of residence had changed negatives such change in circumstances as removes restriction, 108 C 359
grantee takes subject to all rights of others of which he has actual knowledge or which are apparent, 108 C 538
easement of access for injury to which abutting owner can bring action limited to street in front of lot, 109 C 151
leaving lot in cul de sac does not entitle owner to compensation, 109 C 151
person injured on passway over which defendant had easement which was not exclusive *held* not trespasser as to defendant, 109 C 161
one having mere right of way which is not exclusive cannot claim that person on it without right is trespasser, 109 C 161
rights in party wall, 109 C 670
——as to taking them when city lays out street with line along center of wall, 109 C 671
owner abutting on much traveled private way owes duty to keep premises in safe condition, 110 C 178
——and is liable though injury resulting from failure to do so occurs on own premises near way, 110 C 178
right of way for sewer imposing on owner assessments of unknown amount not such unimportant incumbrance that seller can claim substantial performance, 115 C 452
when town takes highway it takes easement for public passing leaving fee in owner; easement includes right to make changes in highway without compensation, 115 C 611
——alteration of grade, of location of traveled portion, cutting of shade trees, within rule, 115 C 611
where two parties have and use right of way in common, they are jointly and severally liable to customer of one injured by defect in it, 119 C 443
——though they had agreed that one would sell products of other on portion of the premises adjacent to way, this did not amount to tenancy giving such control as would free former from liability, 119 C 443
——extent of duty is to keep way reasonably safe for customers of either, 119 C 443
right to mine as incumbrance or incorporeal hereditament; abandonment, 121 C 43

action of ejectment will not lie for an easement or incorporeal hereditament, 121 C 50

——essential to ejectment is proof of legal title, 121 C 50

appropriate recourse of owner of easement against obstruction or interference with easement is not to ejectment but to equity; injunction the proper remedy, 121 C 50

——so where mortgagee of land and appurtenances which had easement of passage, etc., over adjoining land, mortgage being in default, claimed ejectment for building on servient land which encroached on easement, demurrer properly sustained, 121 C 50

mandatory injunction to compel removal of building claimed to encroach on area to which easement attached, 124 C 191

modification of building restrictions, 125 C 373

unlawful entry on land does not constitute trespass as to one only having an easement therein, as for a line of telegraph poles, 125 C 526

——but principles governing liability of owner of easement to trespasser as regards negligence are same as those applicable to owner of land, 125 C 526

where there is condemnation of land for highways laid out by towns, all that is taken is an easement, 129 C 246

——where Legislature gave highway commissioner power to "take" land necessary for trunkline highway, taking of same nature was intended, 129 C 246

if owner of an easement in land acquires fee, his lesser estate is merged and whole legal title is vested in grantee, 129 C 246

§ 2. Creation and Existence

§ 3. ——In General; By Express Grant, Reservation or Covenant

way laid out under statute; second application under statute is not precluded by proceedings under the first, 15 C 93

application lies to County Court on refusal of selectmen to lay out way asked for, 15 C 94

——though they offer to lay it out in another place, 15 C 94

——if necessity appears on record, decree is not erroneous because it appears that it is convenient also, 15 C 96

what certainty of description is sufficient under statute, 15 C 99

decree establishing way "for petitioner, his heirs and assigns" *held* not erroneous, 15 C 99

decree must state time of opening and damages to be paid, 15 C 100

joint erection of dam by adjoining mill owners; user; presumption of grant to owners jointly, 21 C 97

——privilege acquired becomes part of adjoining estate, 21 C 99

individual right to take sand from beach; how must be proved, 41 C 24

——unorganized public cannot acquire this right, 41 C 24

conveyed in deed; subsequent grantee of land from same grantor cannot claim encroachment, 52 C 433

two deeds *held* not to convey easement in adjoining land, 54 C 99

——might be created by deed in connection with peculiar facts if defendant had owned adjoining land in severalty, 54 C 99

——but owning as tenant in common deed would not have that effect, 54 C 100

statute as to layout of private way considered and applied, 68 C 113

easement of party wall must be clearly granted; deed construed; building up to line does not establish, 72 C 141

easement in lawn, avenue, and beach, created by plotting ground; rights of various lot owners, 76 C 295

a way cannot be established in a community by grant or prescription, 78 C 130

no personal easements can be created by immemorial custom or in favor of a community, 78 C 130

if facts show intent to grant easement, grantors cannot question it even if a legal grant is not made; maintenance of poles on land, 83 C 581

one who has lost riparian rights through adverse use has nothing from which to create an easement in favor of a third party, 83 C 611

way reserved is appurtenant to land retained, 85 C 190

grantor who makes a reservation and exception of a passway, but who has no interest in retaining the fee of the passway, upon conveying creates a reservation of a right of way, the fee vesting in the grantee, 85 C 546

——grantor has easement for life only, 85 C 546

right of eavesdrop may be acquired by grant or prescription, 89 C 359

agreement with railroad for spur track is more than license; gives a right of way, 89 C 606

grant of use of a spring by A "his heirs and assigns," conveyed a fee subject to be determined by nonpayment of rent, 91 C 146

right of lateral support where wall is built wholly on land of dominant owner, 92 C 18

where tract divided and easement created in favor of one portion by recorded deed, sub-

sequent owners of servient portion charged with constructive notice, 104 C 139
right of way cannot be acquired over route of public highway unless it is discontinued or abandoned, 104 C 389
owner of servient tract charged with constructive notice of reference to right of way in recorded deed of dominant tract, 104 C 596
when easement by grant is claimed, evidence that it exists by necessity is immaterial, 104 C 596
easement of abutter on highway to light, air and view, 104 C 610
public easement in highway defined, 104 C 610
may be acquired by deed or prescription, 107 C 656
grantee takes subject to all rights of others of which he has actual knowledge or which are apparent, 108 C 538
right arising from sale of lots in tract on which streets are delineated does not extend to streets which are not and will not be of benefit to lot owner, 112 C 28
right of purchaser of lot in tract laid out with highways to have them kept open, 112 C 557
——does not extend to roads which will not be beneficial to him, 112 C 557
——but does where street would give lot means of access to another highway, 112 C 557
——this is a private right which exists though there is no public way, 112 C 557
——violation of statute which had no penalty in laying out way does not prevent existence of easement, 112 C 557
——right of lot owners arises out of map shown to them when deed was made without regard to recording, 112 C 561
where one purchases a lot in development on plan of which streets are shown, test of right to use street is whether it is of benefit to him, 114 C 642
——lot owner *held* entitled to have boulevard along shore used as promenade and to park automobiles kept open though it was a dead end, 114 C 642
——intent of developers as to keeping streets open not communicated to purchaser nil sig., 114 C 646

§ 4. ——By Prescription.

title to easement not gained by adverse possession less than fifteen years, 4 D 250, 6 C 290
user is interrupted by unity of possession, 6 C 290, 11 C 322
presumption is not repelled by proof of license to do some other act on same premises, 8 C 128
founded on grant supposed to be lost; none, except for such property as may pass by grant, 9 C 305
to acquire, by user, the user must be adverse, 11 C 322
dam erected for temporary purpose does not aid claim of easement by prescription, 17 C 418, 18 C 239
prescriptive right to dam watercourse requires clear proof, 17 C 420
ways by prescription depend on character of user, 18 C 331
unity of ownership prevents acquisition of new or additional right, 21 C 98
how prescription to be pleaded in bar, 21 C 340
no prescriptive right to have fence maintained without contribution, 21 C 344
title by, always founded on presumed grant or agreement, 21 C 345
particular use of water for fifteen years harmless to others, confers no right, 25 C 330
public landing on river; adverse claim; exclusive possession necessary, 32 C 498
where easement is acquired by prescription, adverse use is presumed to have been with knowledge and acquiescence of owner, 33 C 334
statute limiting time of entry on lands, applies to easements adversely used, 35 C 176
——limitation of five years after discoverture, 35 C 177
right to flow land for mill purposes; using land as pasture is not adverse use, 35 C 401
void grant by town; terms admissible to show character of adverse user, 35 C 423
right of way may be gained by continuous use of successive members of unincorporated society, 37 C 143
——as appurtenant, not as a personal right, 37 C 143
right of way appurtenant to land of A and B may be acquired over land of A, 37 C 144
no legal presumption that open, continuous use of way is adverse, 37 C 146
claim of, by user; no inflexible rule as to the weight to be given user, 37 C 147
——whether user is adverse is to be decided like any other fact, 37 C 147
use of lane; more naturally referred to implied permission, 37 C 463
single, attempted interruption of adverse user followed by no test of right does not necessarily destroy presumption of grant, 40 C 30
——goes to jury for what it is worth, 40 C 30
unlimited right by prescription to take sand from another's land, unreasonable and not upheld, 41 C 25
adverse use of water for fifteen years confers an easement, 45 C 415
right of Hartford county to use old state house for court purposes may rest on prescription, 49 C 562

foundation of prescriptive title is a presumed grant from party adversely affected, 51 C 77
claim of way by prescription as a defense to trespass; burden on defendant, 54 C 18
——refusal to charge that proof of highway would not prove private way by prescription *held,* under circumstances, no error, 54 C 18
mere user will not establish a way by prescription; it must be adverse, 54 C 19
——charge of court *held* correct under the pleadings, 54 C 19
easement by prescription over old highway must be by adverse use after public right had ceased, 54 C 20
in favor of long continued user and possession courts will presume everything, 55 C 148
title cannot be obtained by occupation under an agreement, 55 C 386
where owner of land adjoining highway and his predecessors had kept up bars across road for sixty years without claim of right, *held* he did not acquire right by, 55 C 396
——whether such right could have been acquired by adverse user, quaere; court inclined contra, 55 C 397
a deed to railroad company reserving the right to use farm crossing over tracks is inadmissible de adverse user, 60 C 29
——plaintiff could, under such deed, have only the rights reserved therein, 60 C 30
the unorganized public cannot acquire the right of fishing, either by grant or prescription, 61 C 187
right of fishing on estate of another may be gained by prescription, how, 61 C 188
——such a right is merely personal, unassignable and uninheritable, 61 C 187
way must be used fifteen years, 69 C 263, 90 C 247
to constitute defense to action for diversion of water, must cover entire diversion, 69 C 668
no prescriptive right to maintain nuisance, 69 C 668, 72 C 531, 83 C 417
user under deed cannot be basis of prescriptive right, 72 C 188
of prescription, in general, 75 C 529
as to part of building jutting over land; no presumption of acquiescence, 75 C 664, 78 C 401, 87 C 31
way may be gained by prescription as appurtenant to land, though separated from it, 78 C 130
a way cannot be established in a community by grant or prescription, 78 C 130
implies grant, 78 C 132
whether use of way is under license or under claim of right is question of fact, 78 C 156
by city for sewer; use may originate in contract or equitable right; agreement with landowner not to lay out street, etc.; imputing knowledge of sewer to landowner, 81 C 137
whether right to lateral support for structure on adjoining lot can be acquired by prescription, quaere, 82 C 126
——burden of proving lateral support by prescription rests on one claiming the right, 82 C 126
prescriptive right to discharge water on land of another not lost by ten years' use of a ditch which kept the water back, 83 C 59
riparian owner does not acquire by prescription right to deposit noxious substances in a stream, 83 C 417
prescription must be reasonable, 83 C 424
common repute inadmissible to establish right of way by, 83 C 500
the prescriptive right obtained to a watershed is measured by the extent to which the claim was asserted, 83 C 611
one who has acquired rights by prescription may use them without liability, 83 C 611
adverse use is use as one's own, 83 C 627
if one builds over a right of way, he may get possession by adverse user to have that particular building there; can have no other which occupies greater space, 87 C 31
easements are acquired by prescription and a cotenant may thereby enlarge his rights; no presumption of acquiescence, 87 C 31
one may obtain by prescription right to build over a court, stream or way, 87 C 31
——does not interfere with title to court, stream or way, 87 C 31
——the right is limited to the original structure, 87 C 31
maintenance of a secret tunnel does not give prescriptive rights, 87 C 31
where a structure is enlarged from time to time, the right to so much as has existed fifteen years is upheld though added to afterward, 87 C 31
maintenance of a structure over a gangway not an ouster of the owner of the soil, 87 C 32
——deed of the fee not void, 87 C 32
open and long continued user is important to prove easement, 89 C 359
——its effect is a question of fact, 89 C 359
defendant, claiming right to discharge rain water, has burden of showing maintenance of building for fifteen years and that it was maintained adversely under claim of right, 89 C 359
way may be acquired by adverse possession, 90 C 241
owner of passway, who becomes executor of the fee owner, thus interrupts his adverse possession, 90 C 241
where user of easement becomes executor of the fee owner, it may interrupt continuity of adverse possession but does not affect

adverse possession already acquired, 90 C 241, 248
finding of prescription by use not reversed because date of commencement is not stated, 90 C 241
origin in invalid grant or parol agreement, 90 C 247
right to maintain fire escape and swinging blinds over land of another may be acquired by adverse possession, 92 C 546
——ouster, not one of soil, but of space above it, 92 C 546
to acquire prescriptive right to underground sewer, user must be open and adverse for fifteen years, 96 C 676
purchaser not bound to use reasonable diligence to discover concealed user which had not developed into an easement when he took possession, 96 C 676
use must be so open as to give landowner knowledge and a full opportunity to vindicate his own rights, 96 C 676
lay of the land and owner's use of a part of an underground sewer near his home *held* insufficient to put him on notice of the existence of a user by another, 96 C 676
claim of right to concealed underground sewer within fifteen-year period will not create instantly an easement even though it might suffice to start prescriptive time running, 96 C 677
whether use of passway is continuous and uninterrupted and under claim of right is question of fact, 96 C 680
what constitutes prescriptive user of passway, 96 C 680, 682, 97 C 192
whether possession has been open, continuous and adverse is question of fact, 99 C 56
owner of servient tract may exercise all rights of ownership consistent with existence of easement; cannot thus acquire title by prescription, 104 C 139
as extinguishing right of way, 104 C 140
——user by servient estate must be notorious, exclusive and hostile, furnishing basis for inference of intent to abandon, 104 C 140
——building fence across way with consent of owner and use of land as pasture where way led to little used woodland *held* insufficient, 104 C 140
accrual of right of action or other legal redress starting point for title by prescription, 104 C 140
right of way cannot be acquired over route of public highway unless it is discontinued or abandoned, 104 C 389
what sufficient to end right of way over premises, 104 C 596
——elements of prescription; adverse use must be with knowledge and acquiescence of owner of easement, 104 C 596
——when that will be found to exist, 104 C 596
abutter on highway cannot acquire right to maintain encroachments upon it, 104 C 610
——or to maintain bridge across it, though its erection is permitted by proper authorities, 104 C 610
where prescriptive right has been established by necessary user, subsequent failure to use way for some years does not destroy it, 105 C 350
——origin of use in oral grant or agreement as emphasizing its adverse nature, 105 C 350
——nature of user and situation of parties as evidence of adverse user, 105 C 350
finding that user was adverse, exclusive and under claim of right ultimate conclusions which must stand unless facts do not support them, 105 C 722
——permissive user to defeat adverse holding must appear from facts to be under a license subordinate to owner's rights and revocable, 105 C 722
——"under claim of right" means "as of right" and does not require affirmation of claim but merely that owner's rights not recognized, 105 C 722
——where no proof of express license or claim of right matter rests on inferences from nature of use and circumstances of parties, 105 C 722
——in case of easement, exclusive right does not mean to exclusion of owner but only independent of any right enjoyed by general public, 105 C 722
——effect of change of use of way from horses to motors, 105 C 722
one claiming easement by user must exercise right so openly as to put owner on notice, 108 C 19
purchaser not bound to use diligence in discovering concealed user of an easement, 108 C 19
rights on highway cannot be lost by public otherwise than through abandonment, 113 C 40
facts *held* to establish prescriptive right to harvest ice upon pond, 114 C 496
——right *held* appurtenant to land on which icehouses stood, though it did not include millsite to which pond was originally attached, 114 C 496
prescriptive right to pollute stream cannot arise until it is so notorious as to apprise plaintiff of it and give it an opportunity to assert its rights, 114 C 500
——plaintiff under no duty to seek out possible sources of pollution, 114 C 500
where easement is established by prescription, the common and ordinary use which establishes the right also limits and qualifies it, 117 C 558

——the manner of use determines the extent of the personal grant, which does not extend beyond the user in which other party has acquiesced, 117 C 558

——when right of way was based on use over prescription period for limited purpose of drawing wood, right of way acquired was limited to that use, 117 C 558

facts insufficient to establish such use of way —open, visible, continuous and uninterrupted, and under claim of right—as is necessary to create easement by prescription, 118 C 436

where plaintiff parked vehicles in driveway for many years, but always moved them to permit defendant's vehicles to pass, *held* use not made under claim of right, 121 C 60

use by express or implied permission or license cannot ripen into easement by prescription, 121 C 60

——where there is no proof of such permission, or of express claim of right by person using way, character of use, whether adverse or permissive, is determined from circumstances of parties and nature of use, 121 C 60

one who is in possession of land as tenant at will or for years cannot prescribe in himself, 121 C 633

unless a lease is effective to cover a right of way, the lessee's adverse use of the way under it cannot enure to benefit of lessor, 121 C 633

——but contra when landlord has represented to tenant that such right of way (or land) was within lease, or landlord knew tenant was occupying it and assented, or there were other circumstances showing it was occupied under lease, 121 C 633

——but tenant cannot without direction of landlord effect a disseisin in his favor or originate adverse possession, 121 C 633

——so where plaintiff occupied premises 1908–1923 as tenant and adversely used passway which was not mentioned in leases, then did likewise 1923–1934 as owner, former period could not be tacked to latter to effect prescription, 121 C 633

tethering of horses and deposit of building material were found not to be interruption of user of way, 121 C 636

while tenant cannot effect disseisin in landlord's favor or originate adverse possession or user unless lease includes land or easement, the inclusion need not necessarily be express; it suffices if it is impliedly included, 124 C 39

——whether or not easement was within leases so that user by tenants might enure to benefit of landlords for prescriptive purposes was question of fact, 124 C 39

——facts *held* sufficient to establish that right of way was considered by both parties to leases to be within them, 124 C 39

town did not gain right to building line, illegally established, by prescription, where no physical or adverse user of property, 124 C 392

where individual use is common with that of the public, individual user must perform some act to knowledge of servient owner clearly indicating his individual claims of right, 126 C 364

——that owners of land on lake used it in common with public for boating, swimming and fishing for fifteen years insufficient, since adverse and exclusive feature absent, 126 C 364

——but activities in watering stock, taking water and cutting ice appropriate property of owner of flowage rights and are necessarily adverse, 126 C 365

§ 5. ——By Implication

implied easement when; effect of recording acts; light, 65 C 383, 78 C 401

implied easement when; party wall; prescription, 66 C 337

appurtenant easement by implication, 78 C 135

implied easement of light and air not favored; as incident to right of way, 80 C 497

easement by implication from prior use of land as part of larger tract from which it is cut off will arise, when, 100 C 635

implied grants of ways not favored, 104 C 53

implied easements recognized to only limited extent because of policy of State that all land titles appear of record, 108 C 19

——underground sewer pipe from one lot across another, 108 C 19

where servitude is imposed on one part of estate in favor of another and is in use at time of severance of two parts, there arises by implication of law a grant of right to continue use, 116 C 156

defendant represented that deed conveyed land on which garage stood; in fact it described property so that garage encroached on other land of defendant; *held* law implied grant of easement in defendant's land sufficient for use of garage, 116 C 156

——deed of defendant's other land subject to encroachment of garage put grantee on notice of plaintiff's rights, 116 C 156

——court should have recognized plaintiff's easement in estimating damages, 116 C 156

policy of our law that all interests in land appear on land records so they may be easily and accurately traced, 117 C 558

——implied grants of land or of easements or any interest in land, allowed here, if at all, to much more limited degree than in other States, 117 C 558

one who relies in good faith on record title apparently complete shall be protected against any claimed interests not of record of which he has no notice, 117 C 564
——in absence of actual notice of existence of easement or of physical facts which put him on inquiry, one purchasing land may rely on land records to disclose existence of such a charge on property, 117 C 564
bona fide purchaser of land without knowledge or actual or constructive notice of existence of easement, takes title relieved of the burden of the easement, 117 C 565
original owners of tract who laid out street and sold lots intended and did create right of way from that street to another, 118 C 436
——but rights therein would inure only to purchasers of land owned and sold by creators of way, 118 C 436
——and finding that title to plaintiff's properties was in creators of way *held* not supported by evidence, 118 C 436
though common grantor of A and B in deed to latter did not reserve right of way over private road between the two parcels, it was important landmark on ground and implied easement was reserved in favor of land retained to which A succeeded, 123 C 343

§ 6. ——By Necessity

grantee surrounded by grantor's land *held* entitled to a way out, 15 C 43
———so also grantor, having sold surrounding land, 15 C 43
——are limited by the necessity which creates them, 15 C 44
——right of heir or devisee is not affected by executor's sale under probate decree, 15 C 44
——common law not changed by statute de private ways, 15 C 45
only had in lands owned by grantor at time of conveyance, 15 C 426
——none in lands in which grantor is tenant in common, 15 C 426
grantor has right of way over tract conveyed, to inaccessible tract reserved, 18 C 328
——not necessarily transferrable to his grantee, 18 C 328
——not a permanent right attached to the land, 18 C 329
a way of necessity is not to be extended to one of convenience, 18 C 330
none implied for vendor, over land sold for specific purpose, if inconsistent with such purpose, 19 C 134
once selected and used, is not to be shifted without special necessity, 19 C 366, 373
language of distribution *held* to convey a right of way by necessity only, 31 C 587
plea of way of necessity *held* sufficient, though abbreviated, 49 C 76
all requisite conditions for, *held* to exist in special case, 49 C 77
——not limited to the precise conditions existing at time land was sold, 49 C 77
——natural difficulties to full enjoyment of, do not bar right to, 49 C 78
——right to limited way elsewhere will not prevent, 49 C 78
facts *held* insufficient to establish a way of necessity, 51 C 75
——such a way is not created by mere necessity, 51 C 75
——must originate in some grant or change in ownership to which it is attached as a necessary incident presumed to have been intended by the parties, 51 C 75
——a common ownership of plaintiff's and defendant's lands is a fundamental requisite for the creation of a way of necessity, 51 C 75
——such ownership must exist at time one of the tracts was conveyed, 51 C 76
——and not to be based upon a presumed common ownership at some past period, without showing the particulars as to the early grants, 51 C 76
Mohican Indians; joint tenants; owners in severalty of adjoining lots, *held* not enabled thereby to grant way of necessity over the joint property, 51 C 77
court will grant "way of necessity," when, 62 C 203
way of necessity could not be claimed by plaintiff under circumstances of case, 69 C 263
when land to which way is appurtenant is subdivided, 100 C 622
ways of necessity exist, when necessity clearly appears, 104 C 36
evidence of, immaterial when easement by grant is claimed, 104 C 596
necessity does not create right of way but is evidence of grantor's intention to convey one, and raises an implication of a grant, 107 C 32
——mere convenience or economy not enough, 107 C 32
——there must be absolute necessity, where otherwise grantee would have no access, 107 C 32
——or reasonable, as where other available means of access would not afford any real beneficial enjoyment of property, 107 C 32
——latter does not exist where grantee can at reasonable cost create way on his own land, 107 C 32
——does where to do so would cost more than land is worth, 107 C 32
——statute as to layout of way by selectmen irrelevant, 107 C 32
plaintiff claimed right of way of necessity over defendant's lot as only means of access to highway; *held*

——such right of way arose when predecessor of title to both parties sold defendant's lot to her immediate predecessor, 117 C 558
——but that as defendant had no actual or constructive notice of it, either from physical condition of land or location of lots or from any instrument in her chain of title, her lot not subject to such way while owned by her, 117 C 558
plaintiffs' properties not so surrounded by other land of original grantors as to create way by necessity, 118 C 436

§ 7. ——Equitable or Negative Easements

negative easement, how created; provision in deeds as to use of yard in common *held* to constitute restriction on use of land, not easement, 69 C 121
where land is deeded to be divided into lots and restrictions for mutual benefit of lots are inserted in it, each lot owner has equitable right to enforce restriction against others, 96 C 530
——each purchaser has notice by the record of the deed of these restrictions, 96 C 530
——one who buys lot, without actual knowledge of restriction, from original owner of tract, who had sold it, took back mortgage and foreclosed, bound by restrictions though neither mortgage nor his deed mentioned them, 96 C 530
——grantor powerless to destroy easements so created, 96 C 538
doctrine of equitable easements stated, 100 C 662
——effect of trivial violations of some restrictions by plaintiff, 100 C 663
prior purchaser may enforce against subsequent grantees, when, 105 C 464
——grantor cannot release, 105 C 464
——right to equitable relief not dependent on showing damages, 105 C 464
——discharge by changed condition, 105 C 464
——one who violates with knowledge of possible consequences cannot resist injunctive relief because of expenditures made, 105 C 464
adjudicated in action to which other lot owners are not party, 105 C 662
existence of equitable easement in lot owners in tract growing out of uniform development, 105 C 657
——as excuse to one under contract to buy lot for not tendering performance before suing for breach, 105 C 657
——release by common grantor does not affect rights of lot owners to insist on restrictions, 105 C 662
——existence of restriction cannot be finally adjudicated, 105 C 662
where substantially all lots in tract are sold with some restrictions, right arises for each lot owner to enforce against others, 112 C 28
——but not when only small part of lots sold with such restrictions, 112 C 28
——basis of rule, 112 C 35
——terms of restriction significant, as where it gives right of re-entry to grantor and his representatives, 112 C 36
——right of lot owners to impose restrictions against successors of grantor as to lots not directly burdened with them, 112 C 37
restrictions upon use where tract is subdivided pursuant to general plan of development constitute negative easements which may be enforced by any grantee against another, each parcel becoming both a dominant and servient tenement, 117 C 180, 118 C 180

§ 8. Termination; Abandonment

extinguishment of use excepted in grant enlarges the grant, 1 R 448
frequently extinguished or suspended by unity of title, 11 C 322, 21 C 98
presumption of abandonment from nonuser, 16 C 173
easement of grantor in land conveyed may be lost by allowing extensive improvements by grantee, 30 C 590
mere failure to raise dam is no evidence of exercise of a right granted to raise it, 35 C 400
——might be evidence of abandonment, 35 C 400
mere license to obstruct way is no evidence of abandonment of, 38 C 571
——nor is permission to pass outside of, 38 C 571
——nor license to build wall across, leaving a bar-opening, 38 C 571
——no defense for obstructing such way, that plaintiff could use barway only by trespassing on defendant's land, 38 C 571
——substitution of new way by consent of plaintiff's grantor, *held* no abandonment, 38 C 571
by deed accompanying lease of store, to run as long as lessees occupied store for business carried on by them, 53 C 554
——*held,* right of way ceased when lessees ceased to carry on business as owners, 53 C 556
——as when partners failed and a company was formed to carry on business, 53 C 556
grant of passway while yard used in common by grantor and grantee terminates when entire yard is covered with buildings, 69 C 263
——in such case there is no way of necessity; this arises from situation of premises at time deed is made, 69 C 263
not abandoned by disuse for eleven years on account of closing of outlet; license to use revoked by chaining up barway, 70 C 441

personal way terminates at death of user, 78 C 130
right of way extinguished by union of dominant and servient estates, 84 C 429
——must so appear of record to be considered on appeal, 84 C 429
abandonment of right of way by railroad permits it to revert to owners, 86 C 275
what constitutes abandonment of a right of way, 86 C 275
passway, to exist as long as no fence was erected, ceases upon its erection, 89 C 704
where plaintiff has stood by for many years while defendant has developed factory on his adjoining land contrary to building restrictions he is guilty of laches, 100 C 653
——injunction may be refused if it would now work disproportionate harm to defendant, 100 C 652
——he will be left to his action at law, 100 C 652
loss of easement by abandonment or by prescription, 104 C 139
consent to erection of slight wire fence across easement *held* not abandonment, 104 C 139
findings de abandonment and adverse possession are reviewable conclusions, 104 C 596
mere nonuser does not constitute abandonment of easement; essentials stated, 104 C 596
what is necessary to establish loss of easement by prescription, 104 C 596
building restrictions growing out of subdivision of tract may be released upon sufficient showing of changed conditions, 106 C 66
——one who buys with agreement for reconveyance unless he can get judgment removing restriction can bring action, 106 C 66
——that injunction forbidding conveyance except subject to restriction has issued against owner of lot will not prevent, 106 C 66
extinguished in whole or in part by written release or abandonment, 107 C 656
——intent to abandon must be clearly indicated by circumstances, 107 C 656
——parol license to destroy or extinguish, executed, ordinarily inconsistent with any other intent, 107 C 656
——this doctrine does not rest on estoppel, 107 C 656
——permission to tenant of building to place show window across entrance to stairway, on condition of giving another means of access to it, 107 C 656
——where plaintiffs charged with notice of easement by record and must have seen situation created by change, they are chargeable with notice of rights under agreement under which it was made, 107 C 656
——agreement is within Statute of Frauds, 107 C 662
——but performance took it out, 107 C 662
——effect of permission to obstruct easement for limited time, 107 C 666
——of permission to tenant, who acts with knowledge of owner, 107 C 665
though resting in grant, may be lost by abandonment, 110 C 374
abandonment of easement question of intent; mere nonuser insufficient; conduct of owner of servient estate; unequivocal acts by owner of easement, 111 C 90
where right to construct drain was granted but grantee utilized natural stream over servient estate and did not build drain, *held* no abandonment, 111 C 90
——in such a case, intent to abandon not likely to be imputed, 111 C 90
——location never having been fixed, rule forbidding change did not apply, 111 C 90
use of easement in manner different from that specified in deed, does not extinguish it, but gives right of action, 111 C 97
driftway, long unused and difficult of passage, *held* not abandoned, 112 C 5
——rule as to what constitutes abandonment restated, 112 C 16
provision in deed construed so as not to permit cancellation of easement reserved, 115 C 727
so long as it remains possible to carry out original purpose of development each purchaser of lot has right to protection of restrictions in absence of laches, waiver or abandonment, 117 C 176
right in nature of incumbrance or incorporeal hereditament may be lost by abandonment, 121 C 43
doctrine of abandonment has most common application in case of easements and other incorporeal hereditaments, 125 C 232
——owner may lose his right, especially if third party has become interested in servient estate after such abandonment, 125 C 232

§ 9. Extent of Right or Use; Location

ancient grant unqualified may be limited by user, 1 R 272
grant of right to erect dam without limitation as to height; practice of grantee concludes him, 1 R 359
privilege "to pass and repass" to rooms in house, set out as dower, "as is most convenient"; extent and location of the use, 34 C 393
easement to lay one-half inch pipe from spring to barn and dwelling of B, construed; change in the nature of the use is allowable when, 35 C 298
grant with privilege of "using well on next lot so long as it remains"; no necessary implication that it shall remain, 39 C 139

in reservation of "for the purpose of carting wood etc.," the "etc." is without meaning or effect, 49 C 76
where terms of grant are general and ambiguous, contemporaneous acts of the parties may be shown to make clear the intent, 59 C 432
an easement located and confirmed by both parties cannot afterwards be shifted by one, 59 C 432
——five years' use of a particular path *held* not conclusive of the meaning of the reservation in deed, 59 C 432
where limited way is created, subsequent deed bounding on the "passway" does not enlarge rights in it, 69 C 263
right of owner to repair; varying, where outlet cut off; passing through new gateway seventy feet away, a variation; parol agreement or conduct as varying, 70 C 439
right "to pass to back land" construed, 72 C 193
grantee of clearly defined way not restricted to such use of it as furnishes a convenient passway, 79 C 454
light and air as incident to way; obstruction not interfering with use; on issue of injunction against, question is, use reasonably to be expected; bay window jutting over, 80 C 497
deed creating, how construed; "right of passway for all purposes across a strip of land twelve feet wide," 80 C 575, 82 C 694
reservation of right to pass and repass construed, 81 C 310
reservation, in deed of premises in fee and use of adjacent cellar, of passway through "these conveyed premises," to another cellar, gives way through former cellar, if this most direct route, 81 C 310
easement in soil of adjoining lot does not include weight of building, 82 C 126, 519, 90 C 108, 92 C 18, 94 C 167
——a narrow strip of soil between building and boundary line does not compel excavator to support building, 82 C 126
an unrestricted right of passway permits passage on it only to highway and other land, 82 C 694
——limited to particular tract conveyed and used for purposes only incident to its use, 82 C 694
character and extent of right of way determined by instrument granting it, 85 C 190
——if ambiguous surrounding circumstances and situation of property are considered, 85 C 190, 546
words telling where passway runs, gives location, not uses of the way, 85 C 190
reservation of right of way in general terms covers any reasonable use to which land may be devoted, 85 C 190
as to mutual restrictive covenants, 85 C 289
one not an occupant of a block cannot use a passway reserved for occupants of the block, 85 C 546
——cannot lay or maintain pipes in passway, 85 C 546
right of access from tidewater flats to highway, how exercised, 86 C 658
the language of deed determines rights of grantor and grantee in passway, 87 C 31
words in deed construed so as to give a twelve-foot space open to the sky and running with the land, 87 C 31
right to pass over an open court does not give right to use cover of an ashpit to unload merchandise, 88 C 377
location of a way that is not dependent on the construction of a deed is a question of fact, 88 C 378
right to take water through five-inch pipe does not give right to all water in the pond, 90 C 393
——does not prevent sale of ice, 90 C 393
right of lateral support does not extend to building, 99 C 40
effect of grant of way over grantor's premises "at such point as he or his heirs or assignors may designate," 99 C 55
——user of another way for three years prior to designation by grantor will not give any rights, 99 C 55
——user as evidence of location in other cases, 99 C 64
in deed of right of way, statement of width as fifteen feet *held* to prevail over monuments which would unreasonably restrict it to two feet, 102 C 663
where necessary to give entrance to way as required by deed court fixed boundary in the sector of circle with a radius equal to width of way stated in deed, 102 C 663
——issued injunction preventing interference with removal of wall to new line by owner of way, 102 C 663
——but refused injunction compelling grantee of person who originally deeded way to construct the wall, 102 C 663
when monuments prevail over courses and distances and vice versa, 102 C 663
effect of such phrases as "more or less" and "about," 102 C 663
character and extent determined by ordinary import of language used, unless circumstances exceptional, 104 C 139
——if granted in general terms, it includes use for all reasonable purposes, 104 C 139
location as established by practical user, 104 C 139
isolated statements of width of passway in deeds of servient tract not controlling as against practical construction and intention of parties, 104 C 596

reference to "carting, etc.," in grant of way *held,* not to be restriction upon its uses, but a limitation upon its location, 104 C 596
uses of right of way may be enlarged to meet necessities of changed conditions, 104 C 596
change from horse-drawn to motor-drawn vehicles is not enlargement of user, 105 C 722
injunction lies against party building wall and planting trees on property over which he has only right of way, 107 C 252
grant in deed of land "together with right to pass and repass" does not include right of way for other contiguous land of grantee, 109 C 297, 299
where owner has fixed location of easement granted in indefinite terms he cannot change it without consent of servient owner, 111 C 90
highway, like grant from an individual, must be defined with reasonable certainty, 117 C 402
——public must have means of knowing how far they may travel without becoming trespassers, 117 C 402
——and individual to what extent his land may be occupied by others, 117 C 402
when easement is established by prescription, the common and ordinary use which establishes the right also limits and qualifies it, 117 C 558
——the manner of use determines the extent of the presumed grant, which does not extend beyond the user in which other party has acquiesced, 117 C 558
——when right of way was based on use over prescription period for limited purpose of drawing wood, right of way acquired was limited to that use, 117 C 558
plaintiff's rights of passage over street would not extend to full width of street, as shown on map, offered to city and refused by it, 118 C 436
easement in street dedicated to public not necessarily limited to traveled path, but may include such width as is reasonably necessary for convenience of public, 120 C 207
rights of grantee of land bounded on "proposed extension" of avenue, map not, referred to in deed, showing street fifty feet wide, 120 C 511
——mandate requiring proposed extension be restored to original condition erroneous, though construed to apply only to strip left over after street was constructed and deeded to city, 120 C 511
——but plaintiff had right to use all of fifty feet free from obstruction by defendants, 120 C 511
——but defendants not obliged to construct street over entire fifty feet and plaintiff entitled to no damages, 120 C 511
grantor conveying land bounded on street is estopped to deny existence of a street at least sufficient to entitle grantee to a right of way over land so referred to, 120 C 518
——rule applied whether or not street is existent at time of conveyance, 120 C 519
——no covenant implied that street will be made and maintained fit for travel, 120 C 519
in determining what is reasonable use of easement, grant is to be considered in light of situation of property and circumstances, for purpose of giving effect to intention of parties, 121 C 60
way was created over five feet of each of two lots from street to rear of property, on which plaintiff parked vehicles for many years to unload at store on one lot, but always moved vehicles to permit others to pass; *held*
——long continued use by plaintiff indicated intention of parties that way be used for this purpose, 121 C 60
——but plaintiff had, under grant, no right to make use of way which would unreasonably interfere with its use by defendants, 121 C 60
——plaintiff's use accompanied by recognition of rights of defendant to pass and repass, was not consistent with claim that such parking was under claim of right, 121 C 60
——judgment should clearly limit plaintiff's right to park on way so that it will not interfere with use of way by occupants of other lot, 121 C 60
right of flowage only an easement, 126 C 365
——owner thereof has only rights incident or necessary to its proper enjoyment, 126 C 365
——has no right to prevent owners of land adjoining lake from using water for boating, fishing, etc., 126 C 365
one having mere right of way has no right to maintain trespass against persons entering property subject thereto, 126 C 367

§ 10. Transfer of Right; Appurtenances

deed of millsite; reservation as to use but heirs and assigns omitted; *held,* reservation was personal, 30 C 589
——purchaser of grantor had no equity in easement, the same not passing by deed or payment, 30 C 590
——especially where grantor had previously released restriction as to use, 30 C 590
grant of right to a spout from ditch runs with the land, 36 C 54
——agreement to put in spout is implied from accepting deed providing for such act, 36 C 53
——part performance, removes it from Statute of Frauds, 36 C 55
grant of, and agreement by grantee to remove wall; grantee's duty is not discharged by grantor's parting with the title, 36 C 302

——such agreement is an assignable chose in action, 36 C 304
partition with right of way; conveyance "with appurtenances" passes the way, 38 C 570
ways appurtenant cannot exist when same person owns dominant and servient estate, 39 C 325
right of way in gross is not appurtenant, 53 C 556
right of way in gross is personal to grantee and not assignable or inheritable even by the words in deed, 53 C 556
whether way reserved is personal, in gross, or appurtenant depends on intent shown by words and surrounding circumstances, 66 C 486
artesian well as appurtenant, 73 C 318
dam and water privilege as appurtenant; must be necessary to enjoyment of land, 74 C 74, 79 C 60, 82 C 95
easement may be appurtenant to close, though separated from it, 78 C 130
water rights, as appurtenant to a mill, pass without mention in deed, 82 C 95
attempted severance of water from mill, void, 82 C 95
general rule as to appurtenances passing, 82 C 95
"appurtenant" defined, 82 C 101
right of way will not be presumed personal one if it can be construed appurtenant to the land, 84 C 429
whether way is personal or appurtenant to land determined from intent of parties, 84 C 429
——the necessities it will satisfy or the benefits it will confer are considered, 84 C 429
words creating an easement appurtenant to adjoining land, 84 C 429
word "appurtenant" is sufficient to pass an easement in land, 84 C 429
whether such word or its equivalent is necessary, quaere, 84 C 429
where right of way is appurtenant to land, its owner may remove obstructions in it, 84 C 429
right of way reserved to a piece of land retained by grantor is appurtenant to piece retained, 85 C 190
right to receive flood water as an appurtenance passing with land without mention, 86 C 597
right of access to highway as appurtenant to land, 86 C 658
right of eavesdrop is not one inherent in or appurtenant to ownership of eave, 89 C 359
——may be acquired by grant or prescription, 89 C 359
passway, appurtenant to land conveyed, attaches to whole lot, and each and every part of it, 90 C 242
——if lot is divided, easement remains if it can be used through adjoining land, 90 C 242
conveyance of land with appurtenances conveys with it appurtenant right of way, 90 C 242
where land to which way is appurtenant is subdivided, whether it remains appurtenant to a subdivision depends on whether owner can avail himself of it, 100 C 622
——either because his land is contiguous or because he can reach it over other lands where he has a right to pass, 100 C 622
——in latter case he could have such way by creation of new way at time, by necessity or implied grant from user, 100 C 622
——once lost, right to use way appurtenant cannot be restored by later acquisition of land between it and subdivision in question, 100 C 622
contract of sale *held* to include passway in favor of adjoining owners, 103 C 285
grant of land "with privileges and appurtenances" is sufficient to carry appurtenant right of way, 104 C 596
acceptance of deed of servient tract, in which passway is mentioned, constitutes recognition of its existence, 104 C 596
deed with "appurtenances" carries appurtenant right of way, 107 C 32
habendum clause "with appurtenances" *held* to convey ice-cutting privilege on adjacent pond, 114 C 503
——right *held* to pass under deed of part of land to which it was originally appurtenant, 114 C 502
no way appurtenant can be created without a dominant as well as a servient estate, 121 C 637
owner or assignee of any portion of an estate for benefit of which easement or servitude is created may claim the right, so far as it is applicable to his part of property, provided no additional burden on servient estate is created, 123 C 343

EJECTMENT

§ 1. In General
2. Essentials to Maintenance of Action
3. ——Property for Which Action Is Maintainable
4. ——Title and Right to Possession
5. ——Ouster

§ 1 Ejectment

6. ——Demand
7. Pleading and Evidence
8. Mesne Profits and Damages
9. Improvements and Taxes

See also Possession

§ 1. In General

verdict to recover "demanded premises," means those only of which plaintiff claims to be disseised, K 415

verdict of "guilty," and fixing damages, sufficient, K 416

entry by plaintiff after suit brought will not abate it, 1 R 73

tenants in common may join in action for common estate or may each sue separately, for his part, 1 R 246

in ejectment for two pieces of land, verdict *held* sufficiently certain, 2 D 68

judgment by default is effectual as a verdict, 5 C 131

discharge of assignor after notice *held* no defense in ejectment, 13 C 569

does not lie for mere trespass to land, nor for a dispossession unless continued to time of suit, 35 C 522

damages for mere trespass are not recoverable in this action, 35 C 522

verdict for plaintiff vitiated by clause allowing defendant to enter and remove barn, 42 C 266

recovery in ejectment is equivalent to actual entry, 58 C 182

plaintiff asserting equitable right to maintain ejectment, which is based simply on a legal demand, cannot prevail, 74 C 684

does not survive death of defendant, 75 C 8

does not lie for mere trespass, 76 C 545

judgment establishes title and dispossession, 76 C 545

effect of statute as to quieting title, 77 C 22

when it lies in general, 81 C 224

nature of the action in this state, 93 C 370

recovery must be for possession of real estate and damages equal to rental value with interest, 97 C 713

when right of action arises, 106 C 484

statute de levy on personal estate applies only to execution on money judgment, not of ejectment, 114 C 432

execution of ejectment on mortgage foreclosure; officer need not make demand for payment of debt or vacating of premises; duty to avoid unreasonable hardship, 114 C 432

conduct of sheriff in removing property from house under execution of ejectment *held* reasonable and proper, 114 C 432

separate action of ejectment no longer necessary to secure appropriation of mortgaged property to debt in foreclosure, 114 C 432

tenant may maintain ejectment against landlord; lodger may not, 116 C 112

mortgagee gets legal title to property and in absence of agreement or other circumstances debarring him is entitled to possession, 117 C 218

——may assert right against mortgagor in possession by action of ejectment; no notice or demand necessary as condition precedent to bringing action, 117 C 218

——has immediate right of entry which he may assert without bringing action, 117 C 218

§ 2. Essentials to Maintenance of Action

§ 3. ——Property for which Action is Maintainable

ejectment lies by adjoining landowner for disseisin of highway, 1 C 103

where property sought to be recovered is tangible, entry can be made and possession delivered by sheriff, ejectment will lie, 15 C 137

ejectment will lie for recovery of land lying below highwater mark, 15 C 137

owner of the soil of a highway may be disseised thereof, subject to the public easement, 19 C 182

owner of land subject to easement for highway if disseised can maintain ejectment, 28 C 167

ejectment as remedy for encroachment on tidewater flats, 71 C 38

action of ejectment will not lie for an easement or incorporeal hereditament, 121 C 50

appropriate recourse of owner of easement against obstruction or interference with easement is not ejectment but to equity; injunction the proper remedy, 121 C 50

——so where mortgagee of land and appurtenances which had easement of passage, etc., over adjoining land, mortgage being in default, claimed ejectment for building on servient land which encroached on easement, demurrer sustained, 121 C 50

§ 4. ——Title and Right to Possession

a long and unlawful possession is sufficient title to recover in ejectment against a total stranger or wrongdoer, 1 R 211, 2 R 102

defendant may give his title in evidence, though those under whom he claims have failed of recovering, in action between other parties, 1 R 232

action fails if defendant gain title pending suit, 1 R 257

copy of execution returned levied on land and of town clerk's certificate that it is recorded, good evidence of title, 2 R 521

plaintiff must recover by strength of his own title, 3 D 267, 39 C 382

tenant claiming under lease from town can be ejected, where town's rights in ecclesiastical capacity had become vested in ecclesiastical society which had made valid conveyance, 4 D 360

where plaintiff claimed title by levy of an execution which had been returned but not yet recorded, copy of record inadmissible, 5 D 160

wife's title and husband's legal interest support averment of their seisin and possession, 5 D 297

unrecorded deed of land will not enable grantee to eject stranger in possession, 2 C 92

where both parties claim land by the levy of executions on it and both levies are faulty, plaintiff cannot recover, 2 C 246

where person under whom plaintiff claimed had paid for land and been in possession but no deed proved to have been given and none recorded, such person had no legal title, 4 C 96

judgment for defendant on his denial of wrong disseisin is no estoppel, when, 4 C 280

ejectment lies by mortgagee against mortgagor holding by tenant under lease since mortgage, 11 C 523

competent for defendant to show want of title in plaintiff without claiming title himself, 13 C 564

prior outstanding title in mortgagee not inconsistent with legal title in plaintiff, so evidence thereon inadmissible, 13 C 564

title of mortgagee under mortgage satisfied after forfeiture may be set up as a defense, 15 C 13

ejectment does not lie by mortgagor against mortgagee even on payment after law day, unless mortgagor gets back the legal title, 17 C 154

outstanding mortgage to stranger is no defense, 26 C 162

a second mortgagee can maintain ejectment against mortgagor, although there is outstanding unsatisfied prior mortgage, 28 C 411

——only prior mortagee and his assigns can avail themselves of legal title conveyed by prior mortgage as defense against action by second mortgagee, 28 C 411

debtor conveyed property to defraud creditors; grantee mortgaged it; *held* debtor could not set up title of mortgagee and his own tenancy under it against ejectment by trustee in insolvency, 34 C 156

motion by defendant in ejectment for new trial; defendant claiming possession does not show actual possession, 34 C 498

by stipulation, where defendant had no title, judgment for plaintiff, whether he had title or not, 38 C 494

——but by adverse possession defendant acquired title to land on which he had erected building and wall, 38 C 494

ejectment lies by mortgagee with bare legal title even after payment of debt subsequent to law day, 47 C 214

disseisor cannot give to any person occupying under or taking title from liens any better than he had himself, 48 C 347

ejectment against mortgagor by one who has levied execution on equity, 64 C 1

plaintiff can recover only by strength of his own title, 75 C 522, 77 C 22, 79 C 325, 497, 86 C 585

estoppel to assert title from standing by in silence while improvements are made, 76 C 586

lack of title in intestate good defense to action by administrator, widow and heirs, 79 C 493

——effect of acceptance of lease from latter, 79 C 493

deed of grantor ousted is void; can be shown on general denial, 81 C 133, 547, 84 C 570

proof of chain of deeds back to some grantor who was owner at time of conveyance establishes prima facie title, 84 C 570

ejectment can be brought to determine validity of possession of disseisor, 93 C 113

of one ousted unlawfully conveys land, he or his grantee may recover it; suit must be brought in the name of grantor, 93 C 113

ejectment may be brought by administrator against one holding under deed of insane intestate or deed obtained by undue influence, 93 C 366

ejectment lies where voidable deed has been given without first securing reconveyance or cancellation, 93 C 366

plaintiff must rely on strength of his own title, 100 C 472, 101 C 406

conclusion that plaintiffs had no title by deed, *held* reasonable; also that they had no title by adverse possession, 101 C 406

ejectment may and usually does involve title, 108 C 173

——if brought to assert right of possession based on claimed title, is substantially proceeding in rem, 108 C 173

——compliance with statute as to notice to nonresidents gives jurisdiction, 108 C 173

——is a local action, to be brought where land lies, 108 C 175

owner of legal interest may bring though not owner of beneficial interest, 108 C 173

in action to recover possession, burden on plaintiff to prove ownership of disputed tract, 112 C 357
mortgagee gets legal title to property and in absence of agreement or other circumstances debarring him is entitled to possession, 117 C 218
——may assert right against mortgagor in possession by action of ejectment; no notice or demand necessary as condition precedent to bringing action, 117 C 218
——has immediate right of entry which he may assert without bringing action, 117 C 218
mortgagee regarded as having legal title to land for purpose of obtaining possession by ejectment or otherwise and holding it as security for debt, 118 C 639
an essential to ejectment is proof of legal title, 121 C 50
while tenant cannot effect disseisin in landlord's favor or originate adverse possession or user unless lease includes land or easement, the inclusion need not necessarily be express; it suffices if it is impliedly included, 124 C 39

§ 5. ——Ouster
defendant's acknowledgment of adverse holding *held* evidence of ouster, 4 C 488
claiming exclusive right to possess is sufficient evidence of ouster, 9 C 114
sufficient evidence of ouster to support action, 24 C 219
an ouster may be committed by a principal through an agent, 30 C 425
tenant in common suing cotenant must have first apprised him of nature of claims, 30 C 492
——insufficient proof of ouster, 30 C 492
ejectment lies by one cotenant against another who refuses to let him enter and occupy, 47 C 477
ejectment will not lie where defendant holds by consent or license of plaintiff, 49 C 560
action of disseisin cannot be brought before party is disseised, 83 C 156
——bringing of action is not revocation of a license so as to make one a disseisor, 83 C 156
lease by tenant in common and the administrator of a deceased tenant in common is of no avail against nonassenting cotenants, 93 C 707
——ejectment does not lie if lessee disclaims exclusive possession, 93 C 707

§ 6. ——Demand
ejectment by mortgagee against mortgagor; no notice to quit required, 2 C 6, 450, 40 C 96
tenant in common suing cotenant must have first apprised him of nature of claim, 30 C 492
——insufficient proof of ouster, 30 C 492
T being in possession with wife, a demand upon him was sufficient, 47 C 190
demand on husband in possession with wife who claims title, sufficient, 47 C 213
——equitable owner may make demand in name of person having bare legal title, 47 C 212
previous demand of possession *held* not necessary, 106 C 497
demand for possession of land unlawfully occupied with knowledge, where there is no privity of estate, not condition precedent to bringing action, 115 C 299
mortgagee gets legal title to property and in absence of agreement or other circumstances debarring him is entitled to possession, 117 C 218
——may assert right against mortgagor in possession by action of ejectment; no notice or demand necessary as condition precedent to bringing action, 117 C 218

§ 7. Pleading and Evidence
under general issue evidence of adverse possession admissible, 1 R 51
defendant may give his title in evidence, though those under whom he claims have failed of recovering, in action between other parties, 1 R 232
doings of freeholders not admissible as evidence, 1 R 259
if land not demanded in writ, court cannot give judgment for it, 1 R 438
when defendant pleads general issue and claims no title in himself he cannot give in evidence a copy of a deed from plaintiff's grantor to stranger to prove plaintiff has no title, 2 R 227
copy of execution returned levied on land and of town clerk's certificate that it is recorded, good evidence of title, 2 R 521
declaration in ejectment need not conclude with demand for possession, 1 D 135
when defendant pleads general issue and claims no title in himself, he cannot give in evidence a copy of a deed from plaintiff's grantor to stranger to prove plaintiff has no title, 2 D 227
what description of the land is sufficient, 4 D 454
where plaintiff claimed title by levy of an execution which had been returned but not yet recorded, copy of record inadmissible, 5 D 160
evidence of grantor's remaining in possession and mortgaging land admissible to show conveyance to grantee was fraudulent, 5 D 373
evidence of usury in consideration of mortgage deeds under which plaintiff claimed title, admissible, without notice, 4 C 437

claiming exclusive right to possess is sufficient evidence of ouster, 9 C 114
plea of estoppel to action of ejectment allowable, 12 C 371
description in declaration *held* sufficient to enable plaintiffs, after establishing title, to recover lands embraced in a highway, 13 C 309
copy of paper purporting to be survey of road laid out inadmissible in absence of evidence of authenticity, 13 C 309
——irrelevant as to title anyway, 13 C 309
prior outstanding title in mortgagee not inconsistent with legal title in plaintiff, so evidence thereon inadmissible, 13 C 564
competent for defendant to show want of title in plaintiff without claiming title himself, 13 C 564
admissions of tenant of codefendant in absence of landlord admissible against tenant, 15 C 11
one count in ejectment may be for several distinct tracts, 18 C 288
plaintiff need not aver how he was "well seized," 18 C 315
question whether town was in possession correctly submitted to jury, 27 C 69
——question of possession is wholly one of fact for jury, and not of law upon facts proved, 27 C 69
plaintiff could go behind survey to show lack of title in defendant, 28 C 322
in ejectment, enough if premises are described in declaration with such substantial accuracy that they can be identified by application of evidence to description, 30 C 425
question for jury whether proof is sufficient to identify premises with those described, 30 C 425
allegation of value of land not necessary in declaration, 42 C 90
act allowing amendments applies to ejectment, 47 C 190
in Common Pleas; plea that property is worth $3000, reply disclaiming recovery of all the land; duty of trial court under the circumstances, 60 C 82
where complaint showed conveyance to plaintiff on condition subsequent, it was not demurrable for not negativing breach of condition, 74 C 630
possession and acts of ownership as evidence of title, 75 C 522
old rules of pleading no longer govern, 77 C 383
if plaintiff bases action on change in littoral rights, he must establish change in shore line, 79 C 325
deed of grantor ousted is void; can be shown on general denial, 81 C 133, 547, 84 C 570
by widow to whom land is specifically devised; that administrator managed property, etc., not conclusive against her possession, 81 C 218
——ownership how proved; possession drawn to title when, 81 C 218
——admissions by one defendant off premises to prove participation in disseisin, 81 C 218
date of dispossession not material in pleading, 81 C 702
time and money claimed for improvements made in good faith in belief that title is good admissible under general denial, 88 C 515
——value of such improvements not allowed, if no mistake as to title, 91 C 13
ejectment may be joined with prayer for equitable relief, 93 C 366
dimensions of premises to be determined from testimony and trier's view at invitation of the parties, 101 C 406
demand for possession and damages may be joined with prayer for equitable relief, 104 C 318
essential allegations in action of ejectment, 104 C 318
in action to recover possession burden on plaintiff to prove ownership of disputed tract, 112 C 357
in action to recover possession, burden on plaintiff to prove damages for wrongful occupation, 112 C 357
evidence of controversy over land after action of ejectment brought relevant to show defendant occupied land adversely at the time, 115 C 299
question of presence of fraud should have been submitted to jury, 117 C 290
where plaintiff conveyed property to defendant and his wife on condition that they support him, with reversion on breach of condition, and wife died, *held* that failure to make her executors or administrators parties immaterial on demurrer as plaintiff alleged that husband was wife's sole heir at law, 127 C 723

§ 8. Mesne Profits and Damages

plaintiff not limited in recovery to precise amount specified but may recover a less quantity, 1 R 246
plaintiff entitled to recover as damages not only rents and profits but waste committed on premises, 2 R 224
plaintiff's entire damages are recoverable, 2 R 440
rents and profits accruing since beginning of action are not recoverable, 8 C 541
disseisee having recovered possession may sue tenant of disseisor for mesne profits, 48 C 355
damages for deprivation of possession where life tenant is plaintiff, 76 C 599

recovery must be for possession of real estate and damages equal to rental value with interest, 97 C 713

in action to recover possession, burden on plaintiff to prove damages for wrongful occupation, 112 C 357

§ 9. Improvements and Taxes

statute de lien for improvements by defendant in ejectment, valid, 48 C 578

——such remedy enforceable in chancery side of federal courts, 48 C 579

——statute does not impair obligation of contract, 48 C 582

constitutionality and effect of betterment law, 74 C 415, 503, 76 C 586, 78 C 202

amendments to law de improvements made by defendant in good faith applied to pending suits, 74 C 503

estoppel to assert title from standing by in silence while improvements are made, 76 C 586

time and money claimed for improvements made in good faith in belief that title is good admissible under general denial, 88 C 515

——value of such improvements not allowed, if no mistake as to title, 91 C 13

plaintiff must rely on strength of his own title, 100 C 472, 101 C 406

judgment of ejectment against vendee in possession should be conditioned on payment for improvements to which he is entitled, 106 C 484

where it had been adjudicated that B had no lien on premises for improvements, G, his assignee, could claim none, 108 C 173

purchaser of equity from one whose deed was unrecorded not entitled to value of improvements in proceedings by mortgagee who has foreclosed, 114 C 88

ELECTION OF RIGHTS AND REMEDIES

§ 1. Rights; Contracts; Estates
2. In Actions

§ 1. Rights; Contracts; Estates

note payable in different articles at payee's election; payee must make election in reasonable time, 3 D 331

——payee's failure to make is no discharge of maker, 3 D 331

when once lawfully exercised is final; location of toll gate by turnpike company, 10 C 163, 12 C 364

right of, is in him who is to do the first act, 31 C 541

defined, 59 C 587

where widow presented claim against estate under an ante-nuptial contract in lieu of dower, *held* she elected to take by it, 59 C 585

——and could not afterwards claim dower though it may not have been barred by contract, 59 C 586

acceptance of gift in lieu of dower *held* not to bar wife's right to statutory share in personal property, 64 C 257

where will gives residue of estate to husband, after certain legacies are paid, and husband pays legacies, he elects to take under will; precluded from attempting to put himself in original position thereafter, 64 C 352

devise of B's property to J, with gift to B, puts latter to election, 64 C 496

election where legacy conditioned on payment of money described as due testatrix; settlement of account and republication of will before death, 67 C 379

law of State of testator's domicil as determining election, 70 C 218

gift to widow reduced in case of remarriage *held* in lieu of dower; right in personal property remaining intestate; when widow is put to election, 70 C 357

gift of life use *held* in lieu of dower, 72 C 253

where testator devised land to children in fee, and they accepted devise, and some of them later discovered an interest in the land in their own right, *held* that these could not attack mortgage made on lands devised to others by latter's assigns, 72 C 342

one cannot claim both under will and against it, 72 C 342, 74 C 96, 128

gift of land and of money belonging to legatee with direction to legatee to build monument, 74 C 96

election between dower and testamentary provision in general, 74 C 128, 576

gift of income of estate until N is twenty-one, then of one-half of estate in fee, is in lieu of dower, 74 C 128

gift to widow presumed not to put her to her election; but intent to do so may be implied, 74 C 576

defined, 76 C 339

election between dower and testamentary provisions; between statutory share in estate and same; effect as to intestate personalty, 79 C 622

gift of all of real estate is in lieu of dower, 79 C 622

gift of income of entire estate to widow and daughter for life is in lieu of dower, 80 C 44

——if gift over fails, widow's estate not entitled to any part of intestate property, 80 C 44

insurance company, accepting premium with knowledge of threatened strike, thereby waives its rights under strike clause in policy, 83 C 393

election between co-tenants to contribute their equitable share of a purchase by one, 85 C 379

what indicates that executor who is also trustee has elected to act as such, 86 C 402

an alternative contract is performed by doing one of several acts at the election of one whose duty is to perform, 86 C 616

owner may elect to complete unfinished building if contract permits, 87 C 686, 89 C 262

vendor can elect not to proceed with contract if it is repudiated, 88 C 23

vendee, on an indivisible contract of sale, cannot elect to return part of the goods and retain the rest, 91 C 71

vendor's action of replevin is election to rescind sale, 91 C 482

if contract of sale is divisible can elect to rescind on each shipment, 91 C 482

if railroad has right to build single, double, and treble road, building of single or double not abandonment of treble, 92 C 363

intent to elect is determining factor; question of fact, 94 C 216

corporation bound to elect whether it will ratify or repudiate acts of its agent, 97 C 589

where party claiming fraud goes on to perform entire contract and recovers in action based on contract he elects to regard it as valid and cannot later rescind, 100 C 156

election of rights distinguished from waiver, 101 C 7

surviving husband or wife must file election to take under Statute of Distributions, or acceptance of testamentary provision will be conclusively presumed, 103 C 213

where foreclosure is brought for unpaid interest alone, this evidences election not to call principal under acceleration clause, 111 C 111

employee under FERA and state relief commission, by accepting substantial payments from latter under reserve fund created as substitute for compensation insurance, elected right inconsistent with claim under Compensation Act, 123 C 505

election means making of act of choice between two or more courses of conduct and implies that act was done under such circumstances that choice is binding, 123 C 515

§ 2. In Actions

one may not pursue all his remedies at same time, when, 48 C 400

complaint for breach of contract and for conversion; same transactions; order of court that plaintiff elect, *held* erroneous, 63 C 565

——but though erroneous the order was not void and plaintiff should obey, 63 C 565

——court justified in nonsuiting plaintiff for refusal to elect, 63 C 566

power to elect is exhausted when once exercised, 73 C 506

statutory provisions as to election of judgment, upon rendition of verdict; decision of judge in trial court equivalent to verdict, 74 C 503

requiring prosecutor to elect upon which one of two or more counts State will claim conviction, matter of discretion for court, 75 C 201

election of remedies under insurance policy is for insured to make, 78 C 188

compelling election between counts; refusal to pass on plaintiff's reservation to proceed later on other, 79 C 670

no election as matter of right on an indictment charging same offense committed on two different times, 81 C 1

whether one can have election of remedies in case of fraud in executory contract, quaere, 82 C 624

plaintiff may elect to treat contract as broken and sue for damages or treat it as in force and sue for instalments due, 83 C 31

for neglect of duty to repair between tracks street railroad can be sued either at common law or on statute, 84 C 654, 94 C 227

one electing one cause of action cannot recover on another independent one, 85 C 448

——plaintiff, alleging purchase on certain date, cannot thereafter base his case on other purchases, evidence of which is introduced by defendant, 85 C 448

one having right to sue either master or servant, principal or agent, is bound by his election, 87 C 528

if no finding is possible because of death of judge, election to move for a new trial or have writ of error, 87 C 608

vendor may elect to accept repudiation as anticipatory breach, 88 C 130

failure to inform commissioner in insolvency that one has security for his debt, does not constitute an election to proceed against the estate only, 88 C 538

if one claims both special and liquidated damages and, under order of court, elects to pursue special damages only, he is bound by his election, 88 C 619

in insolvency, creditor can elect to give up security, 91 C 58

if vendor of real estate does not give good title, vendee can rescind contract or sue for damages, 94 C 589

one electing to take liquidated damages cannot later claim lien on land under an agreement, 95 C 66

where conditional bill of sale gives vendor option to treat agreement as sale, bringing action for balance due constitutes election and no notice is necessary, 96 C 448

of plaintiff, to pursue defendant principal or agent, 100 C 14

mistaken assertion of nonexistent remedy no bar to pursuit of proper remedy, 101 C 1

consistency of claims only required as between existing and available remedies legally open, 101 C 1

——hence claim for lighting fixtures may be made against receivers based on conditional bill of sale despite earlier attempts to assert mechanic's lien which would not be legal, 101 C 1

defrauded buyer must promptly elect between rescission and damages, 102 C 137

beginning action on contract not inconsistent with later action for damages for fraud in inducing it, 103 C 390

courts permit party to pursue several independent remedies if reasonably necessary to secure complete redress, 105 C 683

bringing action on unauthorized contract to repurchase stock bought of corporation does not prevent action to cancel contract of purchase as fraudulent or because not authorized to issue stock, 106 C 41

pursuit of wrong remedy in another State does not bar action for proper relief in this State, 106 C 41

remedies for collection of taxes are concomitant, 106 C 542

pursuit of mistaken remedy is not an election, 107 C 574

application to court for order on attorney to return note to holder, where it was sent to attorney for purposes of certain trial does not preclude action for conversion, 107 C 574

——particularly as court was without power to grant order, as note was not an exhibit, 107 C 574

where defendant in replevin applied to justice for new bond before return day, instead of pleading defects in abatement of action, he has elected his remedy, 111 C 112

——and must abide by it, though justice does not act till after return day, 111 C 112

pursuit of ineffective action based upon invalidity of assessment proceedings *held* not election which will prevent seeking review of assessment, 113 C 652

——as where in one action damages for trespass by entry on land and reassessment are both sought, 113 C 652

actual or implied intent is necessary to constitute an election between two remedies, 114 C 378

presentation of general claim in bankruptcy ordinarily inconsistent with enforcement of security or right to repossess, 114 C 378

——but where creditor files claim "without prejudice" it does not bar reclamation proceedings, 114 C 378

one making election between inconsistent remedies is estopped to pursue another adversely affecting other party, 114 C 378

plaintiff filed general claim in bankruptcy "without prejudice" and sued trustee after assets were distributed; *held* he was estopped, 114 C 378

in this State conditional vendor by action to recover purchase price elects to treat transaction as sale vesting title in vendee, 118 C 220

——cannot thereafter reclaim on theory title remains in him, 118 C 220

——particularly where contract reserved right to sue for purchase price "instead" of reclaiming possession, 118 C 220

——and this was so though suit was not brought for entire purchase price but only for instalments due and unpaid, 118 C 220

defendant cannot in one defense expressly admit fact and expressly deny it in another, 122 C 185

——nor has he right to pursue inconsistent claims when this will complicate issue and where he does so court in its discretion may direct that he elect the position on which he will stand, 122 C 185

——defenses in negligence action that defendant was in exercise of due care and that parties were within Compensation Act were not inconsistent within rule, 122 C 186

in suit on liability policy, defense that plaintiff not entitled to benefits of policy not so inconsistent with defense that case came within certain exclusions in policy as to require an election between these defenses, 122 C 197

doctrine of election between remedies only applies as regards choice between those which are inconsistent, 123 C 469

——doctrine a harsh one, not to be extended, 123 C 470

——mistaken attempt to pursue remedy which must necessarily be unavailing does not prevent resort later to appropriate remedy, 123 C 470

——choice between two remedies in ignorance of true facts does not constitute election, 123 C 470

when plaintiff's efforts to secure relief from change in zoning classification failed it was entitled to abandon proceedings and seek direct relief in courts, 123 C 470

——especially when, in ignorance of true facts, it failed to take appeal, 123 C 470
choice between two remedies in ignorance of true state of facts does not constitute a binding election, 127 C 25
stockholders who had previously signed proxies to be voted for voluntary dissolution of corporation not knowing facts, neither waived right nor were estopped to ask appointment of receiver, 127 C 25
where court gave plaintiff chance to amend complaint so as to raise another issue, but he elected to stand on appeal from judgment on fraud count, he is confined to that issue, 128 C 204
where plaintiff failed to prove allegations which would justify relief upon either of two counts, ruling requiring him to elect upon which count he would proceed of no consequence, 129 C 14

ELECTIONS AND ELECTORS

§ 1. In General
2. Electors; Registration
3. Ballots
4. Conduct of Election; Voting; Count
5. Declaration of Results; Return
6. Contested Elections; Procedure
7. Absentee Voting

See also Public Officers

§ 1. In General

whether election of one officer is legal, when law requires election of a board of officers, quaere, 32 C 108
our institutions are based on principle of rule of majority, 42 C 35
——rule applies to all communities or associations, in absence of contrary provision, 42 C 35
where under city charter, common council in joint convention appointed prosecuting attorney *held* it could appoint in any manner it saw fit, 53 C 81
——and where by ballot, relator having a majority and result so announced was elected, 53 C 83
——that a ballot taken was not informal, and no resolution declaring relator elected was necessary, 53 C 83
——convention could only appoint; having appointed title vested at once in appointee, 53 C 82
——convention could not take it away, and resolution declaring ballot void and defendant elected was of no effect, 53 C 84
statute forbidding pools on election *held* valid though term "pools" and the ingredients of the offense are not mentioned, 60 C 102
under statute, a person first named on a plurality of ballots as actually cast is first selectman, 60 C 361
——and not the one first named on a set of ballots or party ticket, 60 C 361
statute makes election by majority or plurality a general rule, 60 C 361
——makes election of town officers by plurality the general rule, 60 C 361
election of state officers is a process; each of the steps taken must be in pursuance of the existing law, 61 C 359
courts may take judicial notice of the fact of an election, but never of a result until some declaration is made, 61 C 359
action against moderator does not test constitutionality of law rejecting ballot, 82 C 324
election to fill vacancy must be for full unexpired term, 89 C 557
mandamus will lie to force a town meeting to fill vacancies; lack of funds is no excuse, 89 C 557
one who claims election by plurality of votes fails if election is a tie, 91 C 363
power of General Assembly to control elections, 102 C 579
early methods of conducting elections, 102 C 596
knowingly becoming a candidate for office on ticket of a new party automatically separates voter from his former party, 102 C 607
parties may spring up and exist for one election alone, 102 C 607
——its candidates and that of old party from which it split may be elected under provision requiring registrars to be of different parties, 102 C 600
——right of one who does not appear or plead in trial court; is entitled to appeal to Supreme Court to defend his title to office, 102 C 600
what is necessary to constitute a political party, 102 C 607
Republican and Independent Republican candidates for registrar; *held* distinct parties and each entitled to office, 102 C 600

one claiming office of first selectman entitled to enforce right by judicial proceeding, 104 C 396

notice of election must be given within time prescribed by charter; bond issue authorized where notice is late is absolutely void, 108 C 145

unnecessary to specify number of grand jurors to be elected in warning of town meeting, 111 C 338

——and such specification not controlling, 111 C 338

purpose of provision that town clerk shall check nominees by voting list of town, 114 C 530

——does not mean that only electors may hold town office, 114 C 530

removal of registrars and deputy registrars for any violation of any law relating to caucuses and primaries, 119 C 655

where, to determine legality of votes, it is necessary to disclose the persons for whom a particular voter voted, public policy of secrecy yields to greater public policy, 129 C 495

——so where testimony of Democratic chairman was relevant, its admission was justified though it involved disclosure to him of way in which voters voted, 129 C 495

provision that permit to sell liquor could be granted only to elector of town constitutional, 129 C 620

§ 2. Electors; Registration

freehold estate ratable, but not rated, does not qualify, 2 D 504

malicious deprivation of elector's franchise is actionable, 3 C 543

whether settlement in another State destroys elector's privilege, quaere, 13 C 458

selectmen are sole judges of qualifications of applicant; Superior Court cannot control selectmen by mandamus, 34 C 415

by act of 1860 a perfected registry list is conclusive, 34 C 455

——after that act the right of challenge did not exist, 34 C 455

——moderator *held* liable for not permitting challenged person, registered, to vote, 34 C 455

statute de duties of registrars construed, 41 C 541

——neglect to take oath is not a duty for which a penalty is demanded, 41 C 541

town clerk and selectmen acting under Article VI, § 5, Constitution of Connecticut are quasi judicial officers, 53 C 535

——as such are protected from liability, 53 C 535

student *held* under circumstances domiciled and entitled to vote in New Haven, 53 C 534

list of borough electors informally prepared *held* a sufficient compliance with charter, 60 C 23

——and not to vitiate result of election, 60 C 24

warden and burgesses *held* not a board of registration, 60 C 23

registrars bound by statute to make correct list of those entitled to vote at annual town election, 64 C 159

——are entitled to reasonable compensation therefor, 64 C 159

what constitutes an elector, 64 C 161

registry list is evidence of domicil and the checking thereof of fact of voting, 67 C 459

liability of town for "expenses" of selectmen sitting as board to admit electors, 75 C 545

registrar not personally liable for wages of assistant, 78 C 670

privilege of elector forfeited on conviction of obtaining money under false pretenses, 86 C 622

elective franchise can only be conferred or taken away by selectmen and town clerks; Superior Court has no jurisdiction, 103 C 157

requirement that member of New Haven finance board be a "resident elector"; *held* to require actual residence in city, not a mere voting domicil, 103 C 157

constitutional provision that every "elector shall be eligible to any office" relates only to state offices, 103 C 157

appeal from decision of registrars in dropping name from party list or refusing to enroll, 124 C 271

——is original judicial proceeding in nature of mandamus rather than appeal, 124 C 271

——judge exercising judicial as distinguished from administrative function, 124 C 271

——and so constitutional question, if statute construed to permit trial de novo, that it would vest in judiciary powers purely administrative, not involved, 124 C 272

statutes concerning duties of registrars give elector unequivocal right to be enrolled on party list upon statement that he is not connected with any other political party, 124 C 272

——and to continue his name thereon as long as he chooses, 124 C 272

——right not dependent on will of registrar or town committee chairman, 124 C 272

——definite prerequisites prescribed, requiring compliance on official's part when they exist, 124 C 272

——provision that registrar and town chairman are to determine whether prerequisites do exist not effective to enlarge administrative duty into exercise of discretion, 124 C 272

burden of proof in proceeding under statute rests on plaintiff, 124 C 272

——facts found supported conclusion that prescribed statutory prerequisites existed for enrolment of plaintiff on Democratic list, 124 C 272
——that court also concluded that burden rested on defendants to show cause for action in removing names did not affect validity of first determination, which was conclusive, 124 C 272
qualifications of an elector, 129 C 624

§ 3. Ballots

votes for "A. J. W." may be shown to have been intended for "A. L. W.," 43 C 538
——evidence *held* sufficient to show such intent, 43 C 538
——such inquiry no violation of the secrecy of the ballot, 43 C 538
under Public Acts 1889, Chapter 247, ballots headed "Citizens" but having names the same as those of the Republican ticket *held* void and not to be counted, 59 C 479
——essentials of a ballot under act of 1889, 59 C 479
——the name of the political party issuing must be printed on the ballot, 59 C 479
ballots admissible if it appears they have not been tampered with, 60 C 359
——though statute has not been fully complied with, 60 C 358
certain ballots *held* on the facts to be clearly illegal under Public Acts 1889, Chapter 247, § 12, 60 C 359
Public Acts 1889, Chapter 247, construed and applied, 60 C 545
——use of word "for" before office not necessarily a distinguishing mark, 60 C 552, 62 C 292
——but may become such under certain circumstances, 60 C 552
——all ballots which do not accord with requirements are void, 60 C 548
——irrespective of all considerations as to the intent or effect of such nonconformity, 60 C 549
——therefore the words "For Judge of Probate Henry H. Stedman," rendered all such ballots void, there being then no election for such official, 60 C 549
——so too the words "and ex-officio registrar of births, marriages and deaths" in title of town clerk, 60 C 549
——duties performed ex-officio by incumbent form no part of title of office unless it is so expressed, 60 C 550
facts *held* to warrant use of "Citizen's Ticket" on ballot, 60 C 546
element of time not essential to the formation of a legal political party, 60 C 547
——nor can the law prescribe the number of voters that must unite to create such a party, 60 C 547
——nor can courts inquire into the motives which prompt its formation, 60 C 547
act of 1889 viewed generally; construction should be reasonably strict, 62 C 291
act of 1889, § 9, is less specific, and wider latitude in construction permitted, 62 C 292
under Public Acts 1889, Chapter 247, §§ 9, 12, two classes of marks; (1) consistent with honesty and good faith, (2) where no good reason is suggested, 62 C 292
——former will not invalidate unless corrupt in fact; the latter presumed corrupt, 62 C 292
folded or creased in unusual manner should be rejected, 62 C 293
found in envelope with printed party circular should be rejected, 62 C 293
with candidate for judge of probate erased and another name written in with ink or pencil by same hand, valid, 62 C 293
with candidate for judge of probate omitted, valid, 62 C 294
state ballots sent to wrong towns, as senatorial candidate was ineligible as a nonresident, *held* valid, 62 C 295
with part of ballot torn off, invalid, 62 C 295
with candidate's name printed De Forest *held* not invalid as not in uniform type, 62 C 295
"Rathburn" for Rathbun with "r" stricken out, *held* valid, 62 C 296
——bad spelling does not vitiate, 62 C 296
with two pasters, one over the other, invalid, 62 C 296
slight marks resembling pen marks but shown to be accidentally caused by printing do not invalidate, 62 C 297
several with pasters over same candidate in same handwriting but with different names invalid, 62 C 297
with names written under printed names of candidate without striking out printed name, invalid, 62 C 296
"marked" ballot; vote to be counted unless clearly within statute; law does not apply to license vote, 69 C 335
what constitutes "marked" ballot, 72 C 99
extrinsic evidence to show for whom ballot intended not admissible, in absence of ambiguity, 72 C 99
ballot to be counted, if possible, 72 C 105, 75 C 584
irregularities in printing ballots, as to name of office, considered, 75 C 13
so in size of ballot; irregularities in arrangement of polling place, 75 C 48
order in which candidates for selectmen appear on ballot immaterial; plurality sufficient to elect, 75 C 460
irregular nomination; printing name of candidate on party ticket without right, 75 C 584

moderator not entitled to count marked ballot because of belief in good faith of voter, 91 C 362
our ballots as cast include only names for which elector votes, not all names on the ballot, 91 C 363, 368
ballots ambiguously marked construed; slight irregularity disregarded, 91 C 363
ballots containing marks in addition to those allowed by law are void, 91 C 363
voting split ticket, 102 C 579
meaning of "the person first named on a plurality of the ballots," 104 C 396
intent of elector not to be defeated by hypercritical construction of ballot law, but legal requirements must be obeyed, 105 C 256
meaning of "person first named on ballot"; ballot includes only names actually voted for, 105 C 256
ballot marked at top of party column, and opposite name of second-named candidate for selectman in other, how to be counted, 105 C 256
split ticket may be voted by marking head of party column and writing desired names into blank column, 106 C 102
ballot not void because name written in blank column accidentally extends beyond allotted voting space, 106 C 102
misspelling name written in blank column does not invalidate ballot, unless it was thereby intended to distinguish it, 106 C 102

§ 4. Conduct of Election; Voting; Count

voting must be within the State and under local supervision, 30 C 591
under act of 1860 right of challenge did not exist, 34 C 455
——moderator liable for not permitting registered voter to vote though challenged, 34 C 455
complaint describing in language of statute offense of voting illegally by assuming name of another is sufficient, 38 C 400
statute de candidates acting as box tenders, 42 C 165
votes and returns are presumed correct unless attacked, 51 C 123
separate box for license ballots under statute, not essential to validity of vote, 60 C 342
——vote not illegal under Public Acts 1889, Chapters 181, 247, because license ballots were placed with ballots for town officers in official envelopes, 60 C 343
when judge should count ballots, though box is unsealed, 60 C 352
duties of presiding officer are not limited by the terms of the Constitution of Connecticut, 61 C 363
ballots rejected for cause without specifying under statute, must be counted, in ascertaining the aggregate, 62 C 285
——where ballots were rejected as double without stating that they were for different candidates, *held* should be counted in the aggregate, 62 C 290
——unless candidate claiming majority should show they were legally rejected, 62 C 289
——on quo warranto, *held* burden of proof on relator to show that he had a majority, 62 C 289
no presumption that doings of moderators are legal, 62 C 291
——all facts essential to jurisdiction to reject ballots must affirmatively appear in the returns, 62 C 291
a candidate operating a machine for opening envelopes at request of counters to show its use, *held* not to take part in count under statute, 62 C 482
where votes in a town and city election were placed in the same envelope, a candidate for a town office acting as counter for city election, *held* "took part in count" within statute, 62 C 483
——though his acts consisted solely of counting envelopes, rejecting unsealed envelopes, opening envelopes and counting city ballots only, 62 C 482
——but only the ballots he had an opportunity to reach and disturb were affected, 62 C 485
——and where there were two boxes one for town and city, and one for town votes only, and candidate did not touch town box, the votes therein *held* not affected, 62 C 486
statute construed to embrace all acts within the scope of counters' duties which bring an opportunity for fraud, 62 C 484
"count" in statute construed, 62 C 484
power of moderator to suppress disorder; issuance of process not required, 65 C 30
ballot to be counted if possible, 69 C 335, 72 C 105, 75 C 584
judicial proceedings to correct errors of moderator at state election; determining title to office before either party has assumed it, under statute, 77 C 595
moderator of meeting not liable for decision made in good faith, 79 C 676
moderator not liable in damages when in good faith he refuses to count a ballot he considers faulty, 82 C 324
ministerial act is one done without exercise of one's judgment in obedience to legal authority and done in a prescribed manner, 82 C 324
whether refusal of moderator to count ballot could be tested under mandamus, quaere, 82 C 324
moderator not entitled to count marked ballots because of belief in good faith of voter, 91 C 362
return should disclose reason for rejection of ballot, 102 C 583

duty of moderator in certifying count of votes for selectmen and first selectman, 104 C 396
ballots of selectmen which should be counted for first selectman, 104 C 396
duty of moderator in declaring and certifying count of votes for selectmen and first selectman, 104 C 396
person must be voted for as selectman before ballot can be counted for him as first selectman, 105 C 256
under law dealing with voting machines, in determining whether a "discrepancy" appears in the return requiring a recanvass of the vote, both the certificate showing votes checked on registry list and that as to number shown on public or protective counter may be resorted to, 116 C 36
——weight to be attacked to difference shown by each, 116 C 36
——whether difference constitutes discrepancy depends on degree and circumstance, 116 C 36
honest exercise of discretion by officials in determining whether discrepancy exists cannot be controlled by court through mandamus, 116 C 36
moderator *held* not to have abused discretion in refusing recanvass because of small difference between number checked on registry list and number recorded on voting machine, 116 C 36
——and court properly refused to order recanvass on mandamus, 116 C 36
erasure and substitution on return of votes for state senator *held* not to have indicated discrepancy and moderator might have so found in exercise of his discretion, 116 C 36
——his exercise of judgment could not be controlled by mandamus, 116 C 36
failure of certificate of election officials to show number of votes registered on public counter and number checked on registry list not sufficient for conclusion of discrepancy in returns, 116 C 36
——court correctly excluded it as evidence, 116 C 36

§ 5. Declaration of Results; Return

votes and returns are presumed correct unless attacked, 51 C 123
statute may require more complete returns than does the constitution, 61 C 289
courts may take judicial notice of the fact of an election but not of a result until some declaration is made, 61 C 359
declaration of the result of an election of governor is indispensable to the choice by the electors under Article IV, § 2, of the Constitution of Connecticut, 61 C 359
——declaration furnishes the only authentic evidence of the choice, 61 C 359
——Article IV, § 2, Constitution of Connecticut, contemplates in all cases that the declaration of result shall be made by the General Assembly, 61 C 362
——such declaration to be made by both houses acting jointly or concurrently, 61 C 362
——declaration thus made is final and conclusive, 61 C 362
——but a declaration of one house without the other is of no effect, 61 C 362
where one house declared a candidate elected and he had taken the oath of office, but the other house had refused to concur, *held* that there had been no legal election, 61 C 360
——and *held* on quo warranto that there having been no election the incumbent remained governor de jure as well as de facto, under Article I, § 4, and Amendment 27, Constitution of Connecticut, 61 C 360
Article IV, § 2, Constitution of Connecticut, provides no other evidence upon which General Assembly is to make a declaration except the "fair list" and "returns," 61 C 362
——in absence of all legislation this should be the only evidence, 61 C 362
"returns" in election laws mean what, 61 C 363
in the election of governor the General Assembly should perform the closing part under Article IV, § 2, Constitution of Connecticut, 61 C 365
——where the two houses refuse to concur in the declaration of a result, but neither house has adjourned, *held* either house could recede from its position and declare a result, 61 C 365
whether Superior Court may investigate and establish title of a candidate for state office by a judgment equivalent to a declaration, on failure of Legislature so to declare, quaere, 61 C 372
——but the Superior Court cannot make the declaration under Article IV, § 2, Constitution of Connecticut, 61 C 372

§ 6. Contested Elections; Procedure

provision in statute declaring the determination of a judge of the Superior Court conclusive, is constitutional, 51 C 125
——construction of, and proper course of procedure under, 51 C 122
——presumed that votes and returns unless attacked are correct, 51 C 123
——respondent may in answer allege other mistakes to his prejudice, 51 C 123
——judge obliged to recount only the votes of wards attacked, 51 C 124
allegation of mistake in counting and returning votes insufficient unless averred to prejudice plaintiff or benefit adversary, 51 C 124

any conclusion or inference from insufficient allegations is itself insufficient, 51 C 124
——allegation that relator "received a plurality of votes cast"; if sufficient in declaration the details must be shown in replication, 51 C 124
Legislature may designate mode of trial of contested election cases, 51 C 126
——jury trial not required if contestants are municipal officers, 51 C 126
——Legislature waived the right of the public in statute, 51 C 127
burden of proof rests upon plaintiff to show his legal election, 60 C 360, 62 C 289
where there is a legal right there is a legal remedy by suit, 61 C 373
deciding as to what person is elected to any office is a judicial process, 61 C 374
——and where there is no special tribunal, the courts must decide, 61 C 375
——courts always have jurisdiction where decision of a special tribunal is not final, 61 C 375
——upon general principles and to prevent failure of justice, anarchy and misrule, 61 C 375
an appeal under statute carries with it a stay of execution, 62 C 488
quo warranto is means to oust an illegal incumbent, but not to induct the rightful person, 66 C 294
recount; necessity for, rests in court's discretion; irregularities in taking vote, 75 C 52
method of appeal prescribed in statute de judicial proceedings for correction of errors of moderators at state elections is exclusive, 77 C 595
no appeal from court de validity of liquor license election, 83 C 330
petition for recount of votes must allege facts and make out prima facie case regarding each ballot box desired opened, 85 C 394
if ballot box ordered opened and recount held, the legality depends on the count of the ballot, 85 C 394
——all interlocutory questions including legality of order to open boxes, unimportant, 85 C 394
on appeal from judgment on a recount, a claim that certain classes of votes were erroneously counted not available unless record gives number and full description of disputed ballots, 85 C 394
material and relevant to set forth in petition for recount alleged mistake in count, 85 C 394
writ of error does not lie to review decision of judge as to legality of vote, 88 C 141
right of appeal depends solely on being party to suit, not on fact of being aggrieved, 101 C 733
trier must make finding whenever necessary to present questions of law, 101 C 733
statute de petition to judge of Superior Court for certificate of election constitutional as applied to constitutional office of selectman, 102 C 579
office of first selectman is an "elective office" within statute as to contesting elections of town officers, 102 C 579
——if judge directs box to be opened, interlocutory matters and decision that it be opened are of no consequence, 102 C 579
——only question is correctness of count, 102 C 579
——once opened for any purpose ballots should be recounted, 102 C 579
——statute is valid and valuable, 102 C 579
——certificate conclusive as to election but neither removes from nor inducts into office, 102 C 579
questions before judge of Superior Court after opening of ballot boxes, 102 C 579
——questions reviewable in Supreme Court on appeal, 102 C 579
voting split ticket for selectman; first selectman, 102 C 579
function of quo warranto, 102 C 579
absence of proper certificate of vote as ground to open ballot box, 102 C 588
where Superior Court reverses result, losing party entitled to appeal though he made no claims at trial, 102 C 600
evidence de party organization before and after election inadmissible, 102 C 600
decision upon election petition should be embodied in judgment file; better practice not to incorporate certificate in judgment, 104 C 396
where official count does not disclose votes for first selectman, judge of Superior Court cannot reach conclusion thereon without opening ballot box, 104 C 396
judgment in election contest may not be based on conjectures, 104 C 404
approved practice upon petition for certificate of election requires judgment file and thereafter certificate of election issued under seal of court, 111 C 338
duty of court to act in election controversies; should do so only when serious injustice would otherwise result, 116 C 36

§ 7. Absentee Voting

under Absentee Voting Act the "form of affidavit and voting instructions" is not regarded as ballot; absentee voter gives expression to his choice only when ballot is cast or voting machine operated in conformity with his desire, 129 C 494
statute de marked ballots does not apply to instructions of an absentee voter as to how he desires to vote; court in error in holding pencil checks and blue type used therein required rejection of vote, 129 C 494

while voter must himself sign and swear to instructions, nothing in statute which prevents his delegating the filling in of the blanks to another, 129 C 494
——nor is there anything in inherent nature of act of filling in blank in instructions before they are signed which requires that it be done by voter, 129 C 494
——such action would be purely clerical; it is signature and oath which makes document effective, 129 C 494
act of chairman of Democratic committee in causing spaces in affidavits and instructions to be filled in by typewriter before sending to voter did not render casting of votes improper, 129 C 494
whether or not absentee voters requested Democratic chairman to fill out blanks in instructions before forwarding them, nil sig.; signing and swearing to them would ratify his act and have all effect of prior authority, 129 C 494
under act, employment of messenger not restricted to cases where personal delivery is to be made to voter; messenger may obtain and mail the blank to voter, 129 C 495

ELECTRIC LIGHT AND POWER COMPANIES

See also Public Utilities Commission; Public Utility Companies; Telephone and Telegraph Companies

company using street bound to high degree of care, 67 C 445, 70 C 65, 75 C 548, 80 C 470
individual liability imposed by statute upon stockholder in telephone, telegraph or light company is that of guarantor for all debts to the extent of 25 per cent of his holding, 68 C 522
control of placing of wires and fixtures in city streets, 71 C 381, 657, 80 C 623
where telephone company cut wires of electric light company, leading to the crossing of other wires which resulted in death, *held* that the cutting of the wires was cause of death, 72 C 617
company using bridge for wires bound to high degree of care; effect of custom of boys going in swimming from bridge, 75 C 548
statute as to acquisition of gas and electric light companies by city construed, 76 C 565
company's easement for a transmission line sustained although there may have been no legal grant, 83 C 581
charter amendment allowing company to utilize its energy to same end as formerly but by a method involving its conversion into electricity did not create a fundamental change in charter, 84 C 276
——as "manufacturers," 84 C 309
nature of such companies quasi public, 84 C 312
private electric light company *held* charged with knowledge of its employee as to custom of policemen regarding unlighted lamps, 88 C 670
child burned by broken charged wire; question of her contributory negligence is for jury, 100 C 49
in what town dam and line of poles are to be taxed, where company generates power from water and has dam partly in two towns and lines running through many, 101 C 383
——transmission line not an easement and poles not fixtures, 101 C 383
duty with respect to construction and maintenance of high tension wires, 106 C 302
liability to boy burned by picking up broken wire, 106 C 302
company bound to use high degree of care in construction and inspection of wires conducting current, but not bound to inspect them so that it would be at all times aware of their condition, 106 C 303
right of eminent domain limited by express provisions or necessary implications of charter provisions, 107 C 587
——Housatonic Power Company *held* to have power to take land for construction of transmission line, 107 C 587
charges must be equal, impartial and reasonable, 110 C 417
——discrimination only permitted where inevitable or incidental or where it has reasonable basis, 110 C 417
——reasonable classification is permissible, 110 C 417
——sliding scale of charges decreasing as amount of power used increases is proper, but not to accord to one company privilege of single charge for all its meters, which is allowed others, is discrimination, 110 C 417
——excess payments made in ignorance of right to combine charges are recoverable, 110 C 417
the mere fact that one resides within a district which company has charter authority to serve does not permit him to challenge its rate structure, 114 C 628
——but prospective customer may in proper case, 114 C 634
function of court upon appeal from public utilities commission is to review conclusions of commission, 114 C 628

——it cannot in the first instance pass upon the reasonableness of rates or requirements for extending service, 114 C 628
——where plaintiff failed to raise question before commission as to reasonableness of requirements for extension, court properly refused to consider it, 114 C 628
reasonable classification of service and rates is permissible provided all who are similarly circumstanced are treated alike, 114 C 628
public service company only required to build extensions which under all circumstances are reasonable, 114 C 628
——the statute embodies a recognition of this principle, 114 C 628
——company not obliged to serve all without discrimination though financial or rate structure will not be affected, 114 C 628
——company sustained in refusing extension of electric service to house where return would be disproportionate to cost of building and maintaining line, 114 C 628
——company may and should establish rates or conditions for building extensions beyond limits of reasonable service, 114 C 628
right to review by court of action of appraisers in condemnation proceedings is in accordance with settled practice, 117 C 230
——where Legislature, in charter, fails to make specific provision for review, intent to depart from practice cannot be implied, 117 C 230
——to construe charter as denying landowner right of judicial review of action of appraisers would open serious question of its constitutionality, 117 C 230
——right of review fairly implied in charter, 117 C 230
public utility supplying service such as water, gas or electricity may adopt rule that service supplied customer may be shut off from one who has defaulted in payment, 123 C 180
——exception where there is bona fide dispute as to customer's liability or correctness of bill, 123 C 180
——and where this is case, present or threatened shutting off ground for injunction or restoration on proper conditions, 123 C 180
——and if charges were unjust or erroneous company liable for damages naturally flowing from act, 123 C 180
——fact that public utilities commission has jurisdiction to determine disputes over charges, nil sig., 123 C 180
——and where real dispute related to interpretation by defendant of rate schedule as applied to plaintiff for certain months, Superior Court could issue injunction and ultimately award damages, 123 C 180
——within province of court to decide propriety of charge which was subject of controversy, 123 C 180
trust indenture in connection with debentures, covenanting that if company created mortgage, pledge or lien on its property it would secure debentures equally, did not create equitable lien on property sold to defendant, 125 C 692
custom of state highway employees to notify power company when working on trees near high tension line so that latter could protect wires, relevant where they did not do so and were injured, 129 C 606
power company liable if negligent location and maintenance of high tension wires proximate cause of death of men trimming trees, though accidental slipping resulted in injury, 129 C 607
——risk of such an accident within scope of those which defendant reasonably bound to anticipate, 129 C 607

EMBALMERS

See Licenses

EMBEZZLEMENT

statute de embezzlement applies to national bank officer purloining special deposit, 34 C 296
——aliter, as to embezzlement of funds of bank, 34 C 296
whether a bailee of goods can embezzle under statute, quaere, 56 C 499
clerk of town hired to care for paupers is an "agent" under statute de embezzlement, 58 C 102
what constitutes; "moneys" in statute; does not include chose in action, 70 C 265
——indorsement for one's own purposes of order for money received on agreement to retain part and pay over rest is not, 70 C 265
collector of town taxes was town "officer or agent" within meaning of statute, 73 C 95
checks and money orders accepted in payment of portion of taxes properly presumed to be "money" in hands of defendant tax collector, 73 C 95
distinguished from larceny, 83 C 449

embezzlement is a statutory crime lacking element of trespass, 83 C 449
general claim collector is creditor's agent within statute of embezzlement, 83 C 449
a charge that, if one keeps money with honest belief he could retain it, there is no embezzlement, is correct, 83 C 449
attorney who took money he had received from a bank for his client is the agent of the client, not of the bank, 91 C 648
statutory embezzlement distinguished from larceny, 102 C 658
charge that after accused had received bonds for certain purpose he sold them and converted proceeds with intent to defraud, charges embezzlement, 102 C 658
——not necessary to prove agency before delivery of bonds, 102 C 658
——elements constituting crime, 102 C 660
statute to be strictly construed and will not include a case not within literal terms, 112 C 39
——statute punishing appropriation of funds by trustee of an express trust will not include prosecution against officers of corporation trustee as individuals, 112 C 39
——but officers are amenable under statute punishing officer or agent of corporation appropriating to his own use or that of another property in his custody, with intent to defraud, 112 C 39
——use for general purposes of corporation of money paid on assignment of building construction mortgage which should have been used to make payments under mortgage, 112 C 39
to constitute offense, there must be intent to defraud, whether statute so states or not, 112 C 39
——there is no prescribed test of this but question is for jury, and much latitude must be allowed in evidence, 112 C 39
——one officer of corporation not liable for acts of another unless he participated or acquiesced with criminal purpose, 112 C 39
embezzlement not crime at common law but only punishable as statute prescribes, 112 C 39
failure of collector to comply with statutory requirement of monthly accounting is neglect of duty only and not defalcation, 112 C 314
misappropriation of taxes for any one year by collector is embezzlement, though he makes good his default in subsequent year, 112 C 314
one who converts money is none the less guilty because he intends to use it temporarily and later return it, 114 C 354
by agent; four essentials of proof, 114 C 456
sales of stock *held* not brokerage transactions creating agency but sales between vendor and vendee; failure to deliver not embezzlement, 114 C 456
intent of broker to defraud purchasers by failure to deliver stock *held* inference not supported by evidence, 114 C 456
conclusion of court that accused received stock from M as agent and appropriated it to own use with intent to defraud her, upheld, 115 C 306
——intent to eventually account to M would not absolve him, 115 C 306
sale by broker of stock entrusted to him to pledge was unlawful appropriation and established felonious intent, 115 C 306
since an embezzlement may extend over a considerable time and different acts may take place in several jurisdictions, defendant may be tried in any place where any part of embezzlement was committed, 128 C 153
——so where defendant obtained bonds in this State and converted them in New York, this court has jurisdiction, 128 C 153
four essentials of crime of embezzlement by agent, 128 C 153
one distinction between embezzlement and obtaining money under false pretenses is that in former defendant does not have title to property while in latter he has, 128 C 153
where one C delivered bonds to defendant upon his representation that he would hold and investigate them and he sold them in New York and used money, all elements of embezzlement by agent present, 128 C 153
——whether evidence disclosed relationship of debtor and creditor rather than principal and agent, question of fact, 128 C 159
——no variance though evidence shows bonds embezzled rather than money as charged in information, as defendant sold bonds and converted the money, 128 C 159
where defendant induced C to execute assignments of mortgages to him and he then sold them and used money, transaction not embezzlement by agent as title had been intentionally transferred to him by C, 128 C 153
agent can be convicted of embezzling fund though he is entitled to retain part of it as commission for collection, 128 C 273
——when he takes for his own use more than amount to which he is entitled, he converts money belonging to his principal, 128 C 273
——if defendant used funds under belief, honestly entertained, that he had right to do so, or retained funds collected under custom acquiesced in by tax collector, he was entitled to acquittal, 128 C 276
——proof of negligence in keeping books no substitute for necessary proof of specific criminal intent, 128 C 276

EMBLEMENTS

See Landlord and Tenant § 16

EMINENT DOMAIN

§ 1. In General
2. When Right May Be Exercised; What May Be Taken
3. Delegation of Power; Scope and Validity of Grant
4. Compensation and Damages
5. ——In General
6. ——Taking or Injuring Property as Ground for
7. ——Measure and Amount
   (1) In General
   (2) Taking Part of Tract
   (3) Highway Layout and Improvements
8. ——Persons Entitled
9. ——Payment; Time of Taking; Interest
10. Benefits
11. ——In General
12. ——Validity and Legality of Assessment
13. ——Measure and Amount; Set-off against Damages
14. ——Enforcement; Lien
15. Procedure
16. ——In General
17. ——The Assessment
18. ——Appeal and Reassessment
   (1) In General; When Appeal Proper
   (2) Procedure in Superior Court
   (3) Effect of Appeal
19. ——Notice

Note: While the power to assess benefits has its origin in the power to tax rather than in the power of eminent domain, both benefits and and damages are included in this title for purposes of convenience, the two being so closely related in the cases as to make their separation impracticable.

See also Constitutional Law § 6

§ 1. In General

damages become a debt against the town, 4 C 182

right of, resides where and how exercised, 21 C 324

what interest is acquired by railroad company in lands taken for railroad purposes, 59 C 419

——it is not a fee and the possession is not adverse to the reversioner, 59 C 420

rights retained by landowner over land taken by eminent domain for railroad purposes, 60 C 200

——a taking for railroad purposes is peculiar, permanent and exclusive and differs greatly from a taking for highway purposes, 60 C 200

——use by landowner for farm crossing is as a matter of law inconsistent with railroad use, 60 C 200

refusal to convey for another purpose than that for which condemnation is sought, 69 C 424

nature of power, 69 C 435

necessity of failure to agree as preliminary to, 69 C 438, 80 C 38, 85 C 605

taking of land under authorized approval by railroad commissioners of agreement between city and railroad as to removal of grade crossing; rights of parties, 72 C 482

Superior Court judge in passing upon application for appointment of appraisers in condemnation proceedings exercises part of judicial power of court, 75 C 237, 78 C 1

finding of necessity a judicial act, 75 C 237, 319
order of Superior Court appointing appraisers in condemnation proceedings is in nature of final judgment from which immediate appeal lies, 75 C 237, 85 C 663
proceedings constitute due process of law, 77 C 422
a later public use should interfere as little as possible with former public use, 81 C 581
fact that condemning party has no funds, immaterial as long as owner refuses to accept assessment, 82 C 51
injunction not granted against eminent domain proceedings if the questions raised can be determined in the proceedings themselves before the land is taken, 82 C 153, 255
when injunction should be denied and damages assessed, 82 C 255, 94 C 510
loss to an individual because of right of public to withdraw from a condemnation proceeding is a community obligation resting on every owner of real estate, 85 C 664
fact that railroad company has entered land without authority, and that suits are pending does not prevent condemnation proceedings, 86 C 36
private property can be taken for public use by every independent government, 86 C 151
——Constitution limits, does not create the power, 86 C 164
property owner with no legal right to be heard on question of necessity is not by lack of such opportunity deprived of property without "due process of law," 86 C 151
"due process of law" defined, 86 C 151
in eminent domain if one is owner of land, method of obtaining title is immaterial, 86 C 658
Legislature determines when use is governmental in nature; courts, whether in a given instance it will be administered for public or private purpose, 87 C 428
pending condemnation proceedings does not change ownership for taxation, 88 C 73
taking land for telephone lines is for a public use, 90 C 179
impairment of property rights in the exercise of the police power is not within constitutional guarantees, 95 C 30, 357
difference between eminent domain and police power, 95 C 358
act appropriating certain sum for the purpose of acquiring by condemnation or otherwise certain tract of land *held* to be not mere appropriation act but attempt to exercise power of eminent domain, 109 C 621
——act was legislative determination to take and of the necessity of taking the land, 109 C 621
——but power to acquire land by purchase would be valid, though taking of land invalid, 109 C 621
proceedings for assessment in establishing building line as exercise of right of eminent domain, 113 C 323
——if taken under special act, town cannot claim it was merely exercising police power, 113 C 323
where there is condemnation of land for highways laid out by towns, all that is taken is an easement, 129 C 246
——when Legislature gave highway commissioner power to "take" land necessary for trunk line highway, taking of same nature was intended, 129 C 246
if owner of an easement in land acquires fee, his lesser estate is merged and whole legal title is vested in grantee, 129 C 246
where highway commissioner took land under condemnation and later obtained warranty deed to it, he could stand on deed as giving the greater estate, 129 C 246
——grantor having had notice of completed taking when he delivered deed was estopped to set up this fact as reason for invalidating deed, 129 C 246

§ 2. When Right May Be Exercised; What May Be Taken

water equally with land is liable to be taken, 16 C 103
purpose to which right of eminent domain may be applied, 17 C 59
prior franchise granted by Legislature is subject to eminent domain, 17 C 60, 461
a right reserved to which every man's land is liable; right to determine necessity of its exercise is in Legislature, 34 C 88
one taking is not an exhaustion of the right in respect to that property, 36 C 198
contracts and legislative grants subject to eminent domain, 36 C 198
land may be taken for cemetery by eminent domain, 43 C 241, 49 C 162, 53 C 553
land once devoted to public use is not liable to be taken for inconsistent public use, unless expressly or constructively authorized, 43 C 242
whether effect on health of neighborhood can be considered under proceedings under flowage act, quaere, 52 C 459
land taken for burial of the dead is a public use if all the public have or can acquire a right to bury in it, 53 C 553
——though expense may practically exclude some, 53 C 553
railroad may both before and after location take parts of highways for its depots and grounds under statute, 56 C 313–315
land cannot be taken simply to improve landscape, 60 C 292
——property cannot be taken for private use under guise of being taken for public use, 60 C 292

——whether use is public or not is a question for the courts, 60 C 291
——land taken for legal establishment of harbor lines is land taken for public use, 60 C 291
under statute de taking of land for cemeteries, where owner cannot otherwise acquire title, *held* to intend only a failure of parties to agree, 62 C 320
power to condemn for sewerage purposes *held* not to extend to land of nonresidents outside of municipality, 69 C 668
property already devoted to public use can be taken for another only by clear authority, 72 C 293, 77 C 83, 86 C 152
what constitutes prior appropriation; reappropriating what was once abandoned, 72 C 294
whether State can take for benefit of the United States, quaere, 75 C 319
taking for temporary use, 75 C 387, 76 C 446
mortgage rights may be taken, 76 C 581
determination of Legislature that uses to be furthered by condemnation proceedings are public, while not conclusive on judicial department is entitled to great weight, 77 C 417
every species of property may be taken; stock of corporation, 77 C 421, 78 C 3
franchise of toll-bridge company, 81 C 62
purchase of part of the land does not prevent condemnation of the rest, 83 C 137
construction of statute giving commission power to condemn land adjoining or adjacent to that which State already owns, 83 C 137
——land condemned does not have to absolutely touch land owned and the purchase of part does not exhaust power, 83 C 137
street railway can take private property near a highway in order to shorten its line, 83 C 603
approval of taking larger piece will not cover taking of smaller, 83 C 603
land taken to store water for a city is for public good, 84 C 523
under power to construct a bridge city can acquire title to necessary land, 85 C 498
condemnor does not have to prove necessity until it is challenged, 86 C 151
city may show effect of dry times and future needs in case of water rights, 86 C 361
finding of necessity is prerequisite to appointment of a committee, 86 C 361
amount of water to be condemned, how measured, 86 C 361
a reasonable not absolute necessity all that is necessary, 86 C 362
reasonable necessity determined by facts; in case of a water company drought must be anticipated, 86 C 362
public use means utility or advantage, productive of general benefits, 87 C 193
impounding flow of stream to maintain flow, provide water for power, baths and parks, and carry off sewage, is a public use, 87 C 193
city may make saving by contract to preserve flow of stream where it constructs reservoir, 87 C 203
public use defined, 87 C 204, 421, 89 C 671
public use means public or governmental use; the property taken must be enjoyed by all, 87 C 421
flowage act is exception to requirements of public use of land taken, 87 C 421
land may be condemned to construct a reservoir to keep up normal flow of a stream, as incident to city water supply, 89 C 671
a private agreement between riparian owners does not impair the public nature of the use for which land is taken to insure a normal flow of water, 89 C 671
Legislature determines necessity of taking land when it fixes the location of the dam, 89 C 671
——commissioners need not pass a formal vote declaring necessity, 89 C 671
railroad commissioners can order the widening of a bridge abutment and apportion the costs between railroad and town, 91 C 472
existing water power under flowage act, not employed in public use, can be condemned for city water supply, 92 C 217
powers granted under flowage act do not limit general authority of condemnation, 92 C 217
property devoted or to be devoted to public use cannot be taken for inconsistent public use without clear authority, 92 C 217
intent to devote property to public use at some indefinite time does not protect it from condemnation, 92 C 217
structure built by upland owner on navigable waters below high water mark subject to eminent domain, 94 C 573
furnishing electricity to public for light, heat, and power is a public use, 95 C 548
determination of necessity must be by Legislature or some body to which power is delegated, 109 C 621
——legislative determination is final where property is specified, 109 C 621
——but determination of necessity is reviewable by courts to see whether in truth it is well founded, 109 C 621
——or made in bad faith or in abuse of power, 109 C 621
where State was attempting to take land for tuberculosis sanitorium, answer setting up history of attempts of State to acquire it and agreement to buy certain part of it should not be summarily dismissed, 109 C 623
——such an agreement might show bad faith in present proceeding, 109 C 623

any limitation upon easement over land taken in street widening must be definite so that property owners will know what rights remain to them and so that there may be reasonably certain basis for award of damages and assessment of benefits, 116 C 341

§ 3. Delegation of Power; Scope and Validity of Grant

General Assembly may create a commission and empower it to condemn land by legal steps for use of railroad to remove grade crossing, 54 C 298

town may take land under § 3490, Rev. 1888, for alteration ordered by railroad commissioners under § 3489, 57 C 102

——also by virtue of general statutes relating to highways, 57 C 102

delegating power to subordinate bodies; conclusiveness of legislative act as to public use and necessity, 69 C 435, 72 C 488, 76 C 436, 77 C 421, 85 C 350, 87 C 193, 428

power to take for sewage purposes included in city charter does not extend to land of nonresident, 69 C 668

power in railroad commissioners to condemn implies power to condemn conditionally, 70 C 626

land already appropriated to public uses may be taken if power is clearly granted, 72 C 301, 77 C 83, 92 C 217

power may be granted to railroad, 72 C 488, 77 C 417

amendment to corporate charter granting power must be accepted and recorded, 73 C 506

grant of power to build specific railroad determines necessity, 74 C 662

Legislature may authorize taking of fee as well as easement only, 75 C 92

if condemnation is ultimately for the benefit of a private person, grant of power to city fails, 75 C 92

when power to exercise right of eminent domain is delegated to a private or municipal corporation, extent of power limited by express terms or clear implications of statute authorizing its exercise, 75 C 387

——authority to take property for a temporary public use, 75 C 387, 76 C 446

act empowering one cemetery to condemn land of another upheld, 77 C 84

——taking for burying ground implies that it shall be public, 77 C 84

——conditioning grant of power on intent of takers, 77 C 84

stock of one railroad condemned by another, 77 C 417, 78 C 1

as to grant of power to railroad to take exclusive possession of highway without provision for prepayment of damages to abutting owners, quaere, 77 C 431

city may pay for park land from general funds; grant of right to issue bonds for that purpose *held* permissive, 80 C 107

State can authorize town to take, 81 C 62

act to condemn land adjoining certain lots *held* to mean any land within the block, 83 C 137

railroad must get right to locate by condemnation or otherwise before it can ask commission for approval, 84 C 40

power to construct a bridge included as an incident right to take title to land that was necessary, 85 C 498

special committee may be appointed by Legislature to build bridge, lay out highway, etc., 85 C 498

——selectmen in fixing compensation are only agents of the town, 85 C 502

landowner entitled to know that party taking land is empowered to take it, 85 C 602

community should be given right to ascertain the cost of purchasing a public utility and withdraw if it finds expense too great, 85 C 664

determination of public necessity is a legislative or political act, not judicial, 86 C 158

——can be delegated to a particular board, 86 C 158

——reviewable only for unreasonableness, bad faith, etc., 86 C 159

statute de taking by city for water purposes not mandatory or exclusive; does not repeal city charter, 86 C 166

act to build a reservoir permitted condemnation proceedings and was binding on company and successors when accepted, 87 C 194

——the water so stored must be returned and any private use made of it is incidental only and does not affect the taking of private property for public use, 87 C 194

affirmative determination of Legislature regarding a compensation reservoir entitled to be respected, 87 C 194

power must be clearly given but need not be express, 87 C 199

limitation to public use may be found in restriction of power of municipality to which it is granted, 87 C 200

mere authority to take for public use suffices, 87 C 201

——by taking, city accepts obligation to properly apply it, 87 C 201

——any person thereafter acquiring property is subject to same duty, 87 C 202

private educational corporation cannot have eminent domain unless it admits every one to its privileges, 87 C 421

grant to cemeteries, 87 C 428

board may be made agent of city to institute condemnation proceedings for acquisition of property and may do so in name of city, 100 C 407

no constitutional right is violated by charter provision that damages be first appraised by city department and that they be final unless appealed from, 100 C 604

——power of municipalities to condemn is found in their charters, 100 C 606

in acquiring parks, town is agent of State, 101 C 191

extent of power granted private corporation is limited by express terms or clear implications of statute authorizing it, 107 C 587

right of electric power company to take land for construction of transmission line, 107 C 587

power of tuberculosis commission to proceed under general law, 109 C 621

grant of power must appear by clear and express terms or by necessary implication, 109 C 621

——authority will be strictly construed in favor of landowner, 109 C 621

where Legislature has not itself determined necessity for taking for public use but has authorized corporation or individual to condemn, right of decision is vested primarily, in that party, 124 C 437

statute giving county authority to take land which its commissioners deem necessary for site of county building does not authorize latter to determine whether new county building should be constructed, 124 C 616

§ 4. Compensation and Damages

§ 5. ——In General

effect of assessing damages for diversion of water at nominal sum, 30 C 321

by statute, damages assessed could not be recovered where highway was discontinued before it was opened and worked, 39 C 114

promise by city to pay damages from change of grade of street, is not binding, when, 47 C 315

——promise not having induced action injurious to owner, *held* no estoppel, 47 C 316

abandonment of uncompleted proceedings to lay out street gives no right to damages, unless there be inexcusable delay, 48 C 68

right to damages is determined by the law when change was undertaken or entered upon, 49 C 400

——change *held* to be entered upon at date of final action affirming original order, 49 C 400

when landowner may sue city for injury resulting from change of grade, 49 C 401

city is not liable for assurances of its officials that the law allowed damages, 49 C 401

conclusively presumed after lapse of sixty years, that damages for road have been paid, 55 C 395

charter requirement of estimate of expenses of city for ensuing year, and prohibition against incurring expenses in excess of estimate as bearing on liabiltiy, 66 C 413

adjoining landowner cannot maintain action at law for damage from change of grade until municipality has failed to perform duty to ascertain damages in statutory manner, 68 C 72, 73 C 348

functions of judiciary as to compensation, 69 C 437, 76 C 436

city liable for damages from change of grade made under order of railroad commissioners, 72 C 276

statutes under police power directing injurious act to be done with provision for compensation considered, 72 C 284

assessment where two improvements overlap, 72 C 288

appointment by Legislature of tribunal to determine value of property taken, 76 C 566

city can condemn land if an appropriation will be available when damages are to be paid, 83 C 270

one is entitled to damages irrespective of benefits or damages of others, 84 C 235

if amount of damages in dispute, question is for jury, 85 C 255

all property is subject to police power, 86 C 361, 561

——damages for injury due to its exercise recoverable only where law or court provides, 86 C 361, 561

use by railroad of its right of way creates presumption that compensation has been paid, 92 C 360

nature and origin of right of landowner to damages, 94 C 152

a property owner, who stands by in silence, cannot attack validity of assessment, 96 C 142

assessment of damages is as binding as a judgment, 101 C 669

where taking of land has been ordered, just compensation presents a judicial question, 109 C 621

——appropriation of certain sum for taking particular land not sufficient provision for compensation as value of land may exceed that sum, 109 C 621

——statute must itself provide for payment of compensation or provision must be found in some other applicable law, 109 C 621

——otherwise appraisers should not be appointed, 109 C 621

——terms of general statute as to condemnation are limited to cases specified in it, 109 C 621

——hence appropriation of sum by State to take particular tract, without reference to it, cannot make its provisions applicable, 109 C 621

the statute (§ 5186, Rev. 1918) providing the mode for condemning land for certain purposes is applicable only for particular purposes referred to therein, 109 C 621

where municipality acts under special law in assessing benefits and damages it is exercising right of eminent domain, 113 C 323

——cannot deny compensation if damages exceed benefits on theory of police power, 113 C 323

on layout of highway by town plan commission the damages to be assessed are the same as would have been recoverable had the town acted without the intervention of the commission, 115 C 611

benefits and damages to be separately determined, 116 C 402

§ 6. ——Taking or Injuring Property as Ground For

consequential damage due to improvement of navigation not compensable, 9 C 436

damage from layout of highway must be direct and not consequential, to require compensation, 21 C 313

railroad legally changing grade of street liable for actual damage to landowner, 22 C 74

raising street to conform to railroad bridge is not an actual taking, 22 C 85

locating railway upon highway as a taking requiring compensation, 26 C 249, 69 C 146

a town cannot authorize owner of cattle to pasture them on highway in front of another's premises without compensation, 28 C 169

no compensation to owner of land for construction of sewers under highway, 28 C 373

adjoining property owner need not be compensated for change of grade of causeway, 29 C 523

party incidentally injured by opening street may or may not be entitled to compensation, 44 C 252

——but such damage is no reason for equitable interference, 44 C 252

city is not liable for incidental damage by fixing grade, when, 44 C 257

——taking by process of law implies a right to determine grade, 44 C 257

regulations de prevention of wharfing is not an exercise of eminent domain, 45 C 374

no liability for incidental damage from change of grade, 47 C 313

damages awarded under flowage act are not recoverable where project abandoned, and where no taking or damage is actually done, 53 C 22

——though owner inconvenienced by uncertainty as to property, 53 C 23

meaning of "taken," Article I, § 11, Constitution of Connecticut, as applied to condemnation of land for railroad uses, 54 C 297

——actual payment a prerequisite to right to use or occupy land condemned under act de removal Asylum Street grade crossing, 54 C 297

compelling railroad to pay half expense of bridge over highway is not a "taking" of property within Article I, § 11, Constitution of Connecticut, 60 C 10

——cannot demand a compensation above amount allowed by statute, 60 C 8

——expense arising from statutory obligation is not a legal element of damage, 60 C 10

damages may be assessed for injury done to other land of same owner by acts of railroad company, though such acts were necessary to occupation of land taken, in addition to the damages arising from the taking, 61 C 451

for incidental injury to land other than that taken by railroad damages may be recovered, in addition to damages for land taken, 61 C 454

where a borough raised grade of sidewalks rendering useless plaintiff's entrances to basement *held* not liable for damage, 61 C 524

——though plaintiff had constructed and occupied such entrances, including four feet of sidewalk, for twenty years, without objection, 61 C 524

——plaintiffs had acquired no right by occupation of any part of the sidewalks, 61 C 524

under act of Legislature giving city authority to take stream for sewer upon payment of damages, *held* failing to pay, city is liable for any or all damages caused, 62 C 239

——Legislature did not intend a taking without payment of the damages to any person injured, 62 C 239

forbidding further use of land for cemetery is not a taking for public use within Article I, § 11, Constitution of Connecticut, 62 C 392

value of a sidewalk destroyed by change of grade is recoverable under statute as special damage, 62 C 457

discontinuing highway in elimination of grade crossing; cutting off or interfering with means of ingress as taking of land, 66 C 225, 75 C 348, 77 C 438

changes in grade may be so slight as not to come within statute, 66 C 335

location of street railway in street as taking requiring compensation, 67 C 197, 69 C 146

change of grade not taking of land, 68 C 72, 72 C 274, 77 C 438

giving damages where building line is established outside of building line fixed by deed, 68 C 358

where charter purports to empower corporation to take land without payment of damage and without provisions for condemnation, it is invalid, 69 C 155
construction of sewer in street, 69 C 171
meaning of "taking," 69 C 435
condemnation of "the waters" of a brook; effect of condemning one brook where two streams are connected by a canal, 69 C 461
nuisance created by discharge of sewage justifiable upon ground of public necessity only upon payment of compensation, 69 C 668, 72 C 531, 76 C 435
right of riparian proprietor cannot be taken except by proceedings to fix compensation, 69 C 682
locating steam railroad in highway; on toll bridge; crossing of steam railroad by street railway; compensation where railroad is located in street; must be injury as well as occupation, 70 C 610
cutting new channel over tidewater flats and modifying wharfing permits is not taking, but must not do unnecessary damage; notice to remove property, where possible, 70 C 685, 71 C 65
what constitutes grade and change of grade, 71 C 652, 76 C 278, 700
layout of street over railroad as taking, 72 C 225
order for elimination of grades at railroad crossing is not taking, 72 C 274
what constitutes a taking, 72 C 302
railroad authorized to change grade, is liable for consequential damages only when made so by statute, 72 C 420
condemnation of stream for sewage purposes, 72 C 551, 76 C 436
no liability at common law on city for incidental damage to adjoining owners due to change of grade of highway, 73 C 37
Good Roads Act does not affect town's liability for special damages for change of grade, 75 C 192
——town only liable where statute makes it so, 75 C 194
statute must provide for compensation, 75 C 343
reasonable use of highway for deposit of building material is not taking, 75 C 343
temporary location of railroad in street, 75 C 343, 76 C 311, 77 C 431
purchase of land after change in grade is ordered does not affect right to damage, 76 C 278
removal of grade crossing not change of grade, 77 C 494
consent to taking waives right to compensation, 80 C 124
construction being ordered by railroad commissioners does not obviate necessity of compensation, 81 C 581
where order of railroad commissioners required highway to pass under main line of tracks, cutting through land of railroad at such a grade as to require retaining wall to support adjoining land used for railroad purposes, municipality liable for property actually taken, 81 C 581
taking for public use means exclusion of owner and exclusive possession, 82 C 51
taking defined, 82 C 51
widening street does not cover building lines, 84 C 121
abutting property entitled to damages for cutting off access to street, 85 C 366
test of additional servitude in case of street railway carrying freight, 85 C 402
condemnation involves just compensation; cannot be shown that taking is of such a nature that there could be no compensation, 86 C 362
mere depreciation of value does not permit compensation; private property is subject to police power, 86 C 561
taking away access to tidewater flats as taking, 86 C 659
unfounded belief that there will be annoying official supervision of remaining land is no ground for damages, 88 C 427
steps leading down to a driveway in a highway need not be removed by the owner if the city allows them to remain; if an obstruction to the public, removal is no legal injury, 89 C 343
to change grade of part of width of highway, leaving the rest unchanged, is a change of grade for which damages may, if they are caused, be recovered, 89 C 347
proprietor of pleasure resort entitled to damages after taking for water supply, 90 C 178
adjoining owners' consent to use of highway by telephone company obviates damages, 90 C 182
ordinarily damages only given where land is taken, but under Bridgeport charter consequential damages are allowed, 90 C 239
structure built by upland owner on navigable waters below high water mark subject to taking; must be paid for, 94 C 73
cutting down land for sidewalk is a change of grade, 94 C 149
——previous change for carriageway does not prevent recovery, 94 C 149
special act authorizing town to build sidewalk and assess part of cost *held* not to repeal provisions of general statutes as to damages for change of grade, 94 C 149
statute providing that flooding highways shall not be a common nuisance does not affect rights of individuals in adjoining land, 95 C 89
special law authorizing power company to discontinue highway must be read with its

charter provision requiring compensation, 95 C 242

Legislature can authorize building lines without providing compensation, 95 C 358

——can establish a town plan commission with general control over opening of streets, building lines, etc., 95 C 358

when property is taken in general, 95 C 382

consequential damages distinguished from taking of land, 95 C 382

quaere whether compensation can be claimed for interference with private uses of watershed due to increasing demands for sanitation, 100 C 459

——defendant water company not liable for effect of orders of town health officers made of his own motion though after its superintendent called attention to situation, 100 C 459

whether use of manure on land near reservoir may be forbidden without compensation, quaere, 100 C 464

no right or interest in land, having market value, can be taken without compensation, 101 C 173

legal taking distinguished from actual physical taking, 101 C 669

statutory liability of town for damage to abutting owner, 104 C 452

abutter on highway cannot be deprived of light, air and view without compensation, 104 C 610, 637

city will not be enjoined from erecting building in violation of building restriction upon it, but it must make compensation, 108 C 359

——covenant restricting building is in nature of easement which cannot be destroyed without compensation, 108 C 359

no right of action by landowner for highway changes resulting merely in rendering access to land more inconvenient, 110 C 664

building lines may be established without compensation under police power, if ordinance is reasonable and adapted to serve public health, etc., 111 C 27

——every presumption is in favor of upholding, 111 C 27

——ordinance forbidding building within fifty feet of any street where no building line sustained on record, 111 C 27

establishment of street line is taking of land, 113 C 40

——effect of act of city in permitting portion of building to remain over new line, 113 C 40

public corporation condemning land for highway need not fix the grade as condition precedent to taking, 113 C 651

——and except as modified by statute there is no liability on city for change of surface of land taken, 113 C 651

——and if commissioner indicates grade of highway he may change it without further liability, 113 C 651

when town takes highway it takes easement for public passing leaving fee in owner; easement includes right to make changes in highway without compensation, 115 C 611

——alteration of grade of location of traveled portion, cutting of shade trees, within rule, 115 C 611

right to damages for change of grade in highway is created by legislative authority and is not within constitutional requirement of just compensation for taking of property, 117 C 499

destruction of right of access from land to highway constitutes a taking, 125 C 407

——so where taking one segment of land destroyed access of remaining land to highway, an award for consequential damages to latter not enough, 125 C 407

——but establishment of new highway to which there was access would render taking a temporary one, damages to be estimated on that basis, 125 C 407

land held by municipality in proprietary capacity cannot be taken for public use without compensation; otherwise if held in governmental capacity, 129 C 106

——public park ordinarily administered by municipality in governmental capacity and can be taken by State without compensation, 129 C 106

——but where town accepted lands under agreement to maintain them perpetually as park, valid charitable use came into effect, 129 C 106

——town accepted lands as representative of State, which cannot receive gift of property charged with use and legally depart therefrom without making compensation, 129 C 106

——all property, including that already devoted to public use, is subject to right of State to take for public purposes, 129 C 106

——State obligated to make town good so far as money could for loss of lands; money received would be held by town subject to restriction similar to that placed on the land, 129 C 107

——though land had no value as park, nominal damages would not suffice; town should receive value of land apart from the restriction, 129 C 107

authorities may establish grade for highway or improve it at any time after taking without liability for consequential damage to adjoining owner, none of whose property is taken, 129 C 262

——so where laying of roadway, sidewalk and curb and change of grade were all within

limits of old highway, abutting owner not entitled to award, 129 C 262

under constitutional provision, unless some property is taken no compensation need be made, 129 C 477

§ 7. ——Measure and Amount

§ 7(1). In General

damages accrued are not assessable by commissioners, 16 C 105

question as to amount of damage for taking water is one of fact, 42 C 139

compensation cannot include costs of litigation; damage for past injury; flowage rights, 75 C 238

rental value of premises as evidence, 75 C 239

where condemnation is sought for sewage purposes court cannot assume that sewage will thereafter be a nuisance, 76 C 435

elements of damage where city takes over gas and electric light plant, 76 C 566

assessment of corner lot; lot in angle of street; slight error in fixing damages, 78 C 574

effect of provision in charter of toll bridge company that, if State takes bridge, value of franchise shall be excluded in fixing compensation, 81 C 62

diminution in value due to condemnation pending appeal can be considered, 82 C 51

plaintiff in condemnation need not pay more than market value, 82 C 378

just compensation is usually, not always, market value, 82 C 460

evidence considered where toll bridge condemned for highway purposes, 82 C 460

net income of property having an earning capacity considered, 82 C 468

special damages is deprivation of rights which the general public does not have or the injury to some interest in land, 85 C 255

right of access to highway is a property right appurtenant to the land; case of riparian rights, 86 C 659

compensation is value of land (including damage to rest of the land) with reference to uses for which land is then adopted, 92 C 31

——value based on possible sale of drinking water from it too remote, 92 C 31

——inadmissible to ask real-estate witness if he had not previously appraised land higher, 92 C 32

building removed before land taken not included in damages, 95 C 2

damages for land taken for reservoir purposes included all future damage, 100 C 459

——such as resulted from order by health officer not to use manure on remaining land, 100 C 459

probable acquisition of future prescriptive title to adjoining tract not an element of compensation, 101 C 173

standard of value of condemned property is its then actual use, or the use to which it could most advantageously be applied, 101 C 173

market value is measure of compensation, 101 C 173

——but owner is not restricted to expert evidence of market value, 101 C 173

——he may offer direct evidence as to all elements material to the expert's opinion, 101 C 173

sales of similar land best evidence of market value, 101 C 173

——evidence admissible as to all details de use, adaptation and selling price of such land, 101 C 173

——error to exclude evidence that sale price for similar land, though lump sum, was computed by evaluating land in three sections, 101 C 173

map showing possibility of erecting certain structures on land is admissible in evidence as bearing on damages, 101 C 180

——location, uses, sales of other property, cost or replacement values may be considered, 101 C 174

diminution in value of use of land pending proceedings may be considered as an element of damages, 107 C 439

measure of damages for taking land or any interest therein; consideration of special elements not reflected in market value, 108 C 359

damage for taking of easement is loss in value of land entitled to it, 108 C 359

——where owner has made improvements to suit owner's taste, these may not be reflected in increased market value, 108 C 359

——where this occurs he is not entitled to individual damages on account of them, but they may be taken into consideration in fixing fair value of property, 108 C 359

purpose of offering expert opinions as to land values is to aid trier in arriving at own conclusion, which is reached by weighing those opinions in light of all evidence and his own general knowledge, 117 C 75

——if expert includes improper elements this circumstance to be weighed by trier, 117 C 75

——or if he fails to include relevant circumstances trier may conclude his estimate too low, 117 C 75

——in instant case, *held* committee might properly reach conclusion he did, though expert included improper elements and qualified testimony on cross-examination, 117 C 86

purpose of appraisal of damages is to give landowner equivalent in value for land taken measured in money, 117 C 138

——fair market value at time of taking is true rule of valuation, 117 C 138

——and that prices are generally depressed at the time affords no sufficient reason for departing from rule, 117 C 138

claim that earning capacity of property not alone controlling as to market value but that prospective purchaser also looks to its adaptability to future uses, so clearly correct that it cannot be assumed referee did not apply rule, 117 C 138

elements involved in computation of net damage to land by public improvement must depend on considered judgment of trier as to widely divergent claims and opinions, 126 C 506

in determining market value, proper to consider all those elements which owner or prospective purchaser could reasonably urge as affecting the fair price, 127 C 455

just compensation means as fair equivalent in money as nature of property will permit, 129 C 114

——market value ordinarily, but not necessarily, the measure, 129 C 114

§ 7(2). Taking Part of Tract

rule of damages where part of, or an easement in, land is taken, 81 C 581

where part of a farm is taken, amount of damages is difference between value of entire farm and remaining portion, 88 C 427, 93 C 86

damages where part of land is taken, 93 C 86

———taking of other portions as permitting more beneficial use by landowner not considered, 93 C 86

measure of damages where part of tract is taken is difference between market value of whole tract before and value of remaining part after taking, 109 C 212

——same result is accomplished by assessing as damages value of part taken and as benefits increase in value of part left, 109 C 212

——value of remaining part not found without evidence where it is deducible from other findings though no direct evidence, 109 C 212

——finding of benefits of a certain sum as specific finding conclusive unless not supported by evidence, 109 C 212

rule of damages where part of land taken, 111 C 27

——if correct result is reached particular method does not matter, 111 C 27, 237

——as where damages for land taken considered apart from effect on value of remaining land, 111 C 34

when court applied right rule as to taking part of land, failure to find value before and after taking, nil sig., 111 C 237

where part of land is taken, tract should be considered as a whole and arbitrary divisions not corresponding to actual situation cannot be made, 113 C 40

——cost of adapting building to new situation as element, 113 C 43

true measure of compensation is difference in market value of whole tract before and after taking; procedure in determining, 113 C 327

rule for measuring damages where portion of tract of land is taken, restated, 115 C 618

where portion of tract is taken in widening street, proper measure of damages is difference between value of whole tract before taking and what remains after completion of public improvement, 116 C 402

——public improvement means particular one on account of which damages are being appraised, 116 C 402

rule of damages for taking part of land is difference between market value of whole tract before taking and that part which is left after, 125 C 418

——use to be made of land taken is necessarily a factor to be considered in application of this rule, 125 C 407

rule for estimating, when portion of tract of land is taken, 127 C 455, 129 C 265

measure of damages where portion of tract is taken is difference between market value of whole tract and what is left after taking, taking into consideration changes contemplated in improvement and those so reasonably probable as to affect market value, 129 C 475

——effect of use made or to be made of land taken to be considered; makes no difference whether land taken be large or small, 129 C 475

where new highway is laid out on plaintiff's land and land adjoining and it is practicable to separate use of land taken from that of adjoining land, plaintiff is entitled to compensation only for land taken and its use, not for use to be made of adjoining land, 129 C 475

——but where use of land taken constitutes integral part of single use to which land taken and other adjoining land is put, effect of whole improvement properly to be considered, 129 C 475

where small triangular piece of land taken for highway, which when constructed will be twenty feet above remaining land, obstructing view and depreciating value, plaintiff entitled to consequential damage by reason of highway construction not only on land taken but on adjoining land, 129 C 475

§ 7(3). Highway Layout and Improvements

only direct and immediate damages are assessable, 21 C 323
——confined to owners of land through which road passes, 21 C 327
damages paid by city for land taken for street include damages from grading, 44 C 240, 47 C 305
provision in city charter that landowners grade and construct sidewalks *held* not to apply where land is taken for public street, 52 C 568
——expense of building sidewalk not to be included in damages for the taking, 52 C 568
destruction of sidewalk and shade trees should be estimated in awarding damages for change of grade, 63 C 433
meaning and elements of damage for change of grade, 66 C 320, 413
damages for change of highway grade include those from change in sidewalk; special damages include what, 71 C 652
——that change should have been anticipated, no defense; action is statutory, 71 C 652
measure of damages for change of grade; front-foot rule, 72 C 292
land properly considered one tract though cut by highway, 74 C 483
puddles on sidewalk as an element of damage, 75 C 343
original layout admissible to show that work was merely brought to grade then established, 76 C 700
elements of compensation for location of railroad in street, 77 C 431
expense of building a wall required to support land after a cut has been made for a highway is a part of compensation, 81 C 581
——and order of railroad commissioners requiring such a cut does not relieve payment for retaining wall, 81 C 581
——contingency that retaining wall will not be built does not relieve from payment, 81 C 581
standard of values defined, 81 C 581
future cost of sidewalks, curbs, and sprinkling not element of, 84 C 234, 90 C 235
damages for loss or injury to trees and driveways and bringing house nearer street, 85 C 237
what evidence is admissible to show damages from change of grade, 85 C 255
vacation of part of a street leaving property accessible to the system of city streets not actionable, but is actionable if it leaves land in a cul de sac, 85 C 367
can recover for injury to access and diversion of travel due to physical change of street, 85 C 367
elements of an abutter's damages, 89 C 343
difference between market value before and after change of grade is measure of damages, 89 C 343, 90 C 235, 93 C 86
possible future damages are not recoverable, 89 C 343
cost of sloping off and turfing and building retaining wall is recoverable, 89 C 343
——such land, however, cannot be treated as land taken, 89 C 343
prospect that future sidewalks will be ordered is not considered in assessing damages, 90 C 235
effect of including sum to build retaining wall to keep in place a part of land not taken, 95 C 470
——where such wall reasonably necessary, it becomes an element of damage, 95 C 473
on question of damages for extending street, a restrictive covenant in a lease, as to assignment, can be considered, 96 C 501
the cost of sidewalk, curb and sewer are not proper elements of damages, 111 C 27
where establishment of building line did not affect existing structures, cost of reconstruction not to be considered as included in damages, 111 C 237
——but when street line was moved back so part of building encroached, this cost was properly allowed, 111 C 237
expense of removing bay windows properly allowed where change of street line made removal necessary, 111 C 237
erection and maintenance of building over building line where it did not interfere with traffic or public not abandonment by city of right to require removal, as matter of law, 113 C 40
——and damages from widening street could not include expense of adapting building to new street line, 113 C 40
where only a portion of a tract is affected by public improvement, remainder may be disregarded in calculation of damages and benefits, 113 C 40
measure of damages where strip of land is taken for highway, 113 C 651
——damages to remaining land should be based on reasonable anticipation of use most disadvantageous to it, 113 C 659
——extent of access to remaining land as important element in damages, 113 C 658
——damages for land taken to be estimated upon basis of its value for most advantageous use, 113 C 659
measure of damages is difference in value of property before and after improvement, 114 C 483
——but expenditures made by owner may be accurate measure, 114 C 483
damages not recoverable for destruction of shade trees within highway limits under statute empowering town plan commission to award damages for location, relocation

or improvement of highway made by it, 115 C 611
——damages as here used means such damages as would be recoverable had alteration been made by town, 115 C 611
under statute providing "special damages" for changing grade of highway, damages for destruction of shade trees within highway limits recoverable, 115 C 611
when relocation of roadway did not bring within traveled portion strip of land taken, *held* plaintiff not entitled to damages based upon nature, location and greater use of highway, 115 C 611
——but he is entitled to damages based on right which town acquires to subject taken land in future to further uses, 115 C 611
damages allowed are restricted to those which are direct and immediate, not indirect, remote and merely consequential, 115 C 616
error in not considering trees and walks as elements in awarding damages, for widening street, 116 C 341
subsequent construction of pavement, curbs, sewers and lighting system improper elements in determination of benefits and damages for street widening, 116 C 402
had trial court found that moving street line to conform to building line resulted in no decrease in value of property, conclusion of nominal damages might be justified, 116 C 409
——and assessment of nominal benefits would have been harmless error at worse, 116 C 409
expenditure of money for change of grade not prerequisite to award of damages based upon decreased value, 117 C 503
——damages awarded may not represent compensation for deprivation of money spent, 117 C 503
finding as to availability of tract for building lots before change of grade of highway not susceptible to change so as to affect conclusion as to damage, 126 C 506
when land taken for highway the public authorities acquire right to make any changes changing needs of traffic render necessary, without compensation to owner, 127 C 455
——so damages for such a taking may include those which will result in future from different or additional use than immediately contemplated, 127 C 455
adaptability of land remaining for use in view of improvement to be made may be proper element, 127 C 455
——so any expenses reasonably necessary to adapt remaining land to uses in view of changes to be made, 127 C 455
——such expenses not recoverable as such but are evidence of elements in decrease in market value, of which they may be the accurate measure, 127 C 455
future changes in highway to be considered may include those so possible of occurrence that they may reasonably affect present value, 127 C 455
——but not if so remote that they would not enter contemplation of prospective seller or purchaser, 127 C 455
erroneous to use as measure of damages to house for taking land to widen highway, the cost of moving it back, where possibility of actual travel being extended to taking line not such that it would enter into selling price, 127 C 456

§ 8. ——Persons Entitled

committee in assessing damages are not restricted, in all cases, to the actual owners of the land on which the road is laid out, 1 C 279
damages for land taken for highway go to executor, not to heir, 4 C 188
damages must be for direct and immediate injury, and confined to owners of land through which highway is laid out, 21 C 313
mortgagor of land taken is entitled to the compensation, 45 C 304
adjoining owner acquires by use no right to basement steps in sidewalk, and recovers no damages for changed grade of sidewalk making them useless, 61 C 518
where trespass precedes condemnation, and part land is meanwhile sold, who is entitled to damages, 75 C 248
purchase of land after change ordered does not preclude right to damages, 76 C 278
only persons through whose land highway is laid entitled to notice and damages, 95 C 317
in eminent domain, trespasser not entitled to compensation for improvements, 101 C 173
——otherwise, in case of occupier under actual or apparent authority, 101 C 173
life tenant and remainderman entitled to respective damages; apportionment, 104 C 452
where individual incorporated business, owning or controlling all stock, and leased building to corporation, award of damages for taking it to him does not preclude award to corporation for destruction of lease, 114 C 531
——leasehold as matter of law cannot be held to have no value because terminable at will of lessor, 114 C 531
in foreclosure there cannot be separation of land and chose in action for compensation due for its taking, 115 C 428
rights of mortgagee to compensation for property condemned, 115 C 428
——where before land was taken city commenced foreclosure of tax lien in which judgment was entered after taking and

mortgagor did not redeem, he had no right to compensation, 115 C 428
——second mortgagee, who redeems, is entitled to it, 115 C 435
award of compensation for mortgaged property appropriated for public use is a substitute for property taken, 115 C 428
——mortgagee has in equity a lien on the award, 115 C 428
pending appeal from award on new building line and before proceedings for new street line, property owner agreed with city for sum in settlement; incumbrancer not notified of proceedings or payment to owner; *held*
——title vested in city by eminent domain, not by purchase from owner, 116 C 601
——incumbrancer not guilty of laches, and was entitled to money paid owner, 116 C 601
——duty of city to ascertain incumbrancers, 116 C 601
——incumbrancer can recover from city under statute and from owner for money had and received, 116 C 601
——primary liability on owner, city secondarily liable, if judgment not satisfied against owner, 116 C 601

§ 9. ——Payment; Time of Taking; Interest.

strict observance of terms required in party exercising right of eminent domain, 13 C 408
——assessment of damages before width of railroad is defined *held* invalid, 13 C 407
whether constitutional to allow taking before payment, quaere, 15 C 326
money to be paid or deposited before taking land, 19 C 151
charter authorizing assessment of "probable amount of expense," does not compel assessment to be made before work is done, 46 C 289
damages for land taken for street improvement to be assessed at the time land is taken, 63 C 424
——regarded as "taken" when improvement is finally adopted, 63 C 424
——and improvement *held* adopted on approval of report of commissioners by the common council, compensation having been provided, 63 C 422
——party appealing not entitled to appreciation in value pending appeal, 63 C 424
damages need not be prepaid, 68 C 72
no liability until damage done; pendency of proceedings to assess, a bar to action for; pleading, 68 C 72, 76 C 280
injunction against taking before compensation is made, 70 C 616
as to necessity of providing for prepayment of damage, 70 C 628, 77 C 431
interest given when, 72 C 277, 75 C 238
statute postponing collection of assessment, did not prevent interest running, 72 C 287, 85 C 552
assessment may be made before work completed, 74 C 488
no taking until proceedings begun; prior use a trespass, 75 C 239, 86 C 36
just compensation means fair equivalent in money paid within reasonable time; future obligation cannot be substituted for present payment, 76 C 435
allowance of interest on appeal, 82 C 51
interest on money awarded cannot be obtained if condemned property is retained during appeal, 82 C 51, 95 C 1
interest is allowed on award paid later than the judgment, 82 C 51
interest on award runs from filing of committee report, 82 C 378
constitutionality of provision making assessments payable when improvement completed, 83 C 270
proceedings tentative until city takes final action, 83 C 270
a charter provision prohibiting public improvements until an appropriation is made does not prevent an order for such improvement if the appropriation will become available when damages mature, 83 C 270
assessment carries no interest unless so provided, 84 C 121
ordinance de interest and changing procedure are prospective, 84 C 121
when interest is allowed on damages, 84 C 122
damages and benefits are separately determined and made as of the date of original appraisal, 84 C 234
assessment of damages is made as of date when report designating the lines is accepted, 85 C 237, 89 C 343
land is taken for a highway when the report is accepted by the proper authorities and all steps prescribed are complied with; interest begins when final step is taken, 85 C 238
land is taken when steps provided by charter are finally completed, 85 C 238
building line assessment is complete when report of department of public works is accepted and recorded by board of aldermen and damages paid or deposited, 86 C 326
granting power to court to fix time and method of payment does not authorize judgment and execution, 88 C 427
assessment for sewer may precede appropriation; appropriation cannot be diverted, 88 C 565
land can be condemned before the corporation accepts the charter amendment asked for by it under which it condemns the land, 89 C 672

no taking until commencement of proceeding; act establishing a park with certain bounds does not constitute taking, 95 C 1
interest collectable on award from time fixed for payment, 95 C 226
damages must be paid within reasonable time from assessment to be constitutional, 95 C 226
requirements that appropriation be provided before land taken is met by amendment to report to aldermen before its adoption, "appropriation available by bond issue," 101 C 191
provision of Merritt Parkway Act for payment by state treasurer of damages assessed by commissioner or reassessed by court fully meets requirement that means must be provided to enable landowner to secure just compensation, 125 C 406

§ 10. Benefits

§ 11. ——In General

assessment for benefits how made on husband's life interest in wife's fee, 5 C 195, 51 C 207
assessment of benefits is an exercise of power of taxation vested in state government and does not violate state Constitution, 23 C 189
benefits as compensation for taking, 23 C 207
assessment for, not a tax within law exempting railroads, 36 C 262
doubtful if common council can agree not to assess particular person for future layout of street, 40 C 105, 60 C 442
charter provision de assessment of benefits, does not authorize assessments on state property, 50 C 90
——unless provision expressly, or by necessary intendment, includes State, 50 C 90
if tenant by curtesy is assessed for entire amount he should appeal, 51 C 207
——or insist that his wife be made a party to the assessment, 51 C 207
——failing so to do he is presumed to assume the whole burden, 51 C 207
language of committee *held* not to imply a distinct assessment of benefits to the land taken, 57 C 123
authority to make special assessments for benefits is found in the taxing power of Legislature, 60 C 112
joint assessment of benefits where interests are separate irregular, 60 C 112
assessments for benefits should be against owners of each piece of land benefited, 60 C 114
——where interests in same land are separate and distinct, 60 C 115
a joint assessment is proper only where ownership is joint, 60 C 114
an irregular assessment for benefits may in some cases be waived by persons assessed, 60 C 115
an assessment for benefits must be wholly joint or wholly several, 60 C 115
assessment for, under special borough charter; *held* wardens and burgesses not required to determine what property was benefited, 60 C 433
——that duty being intrusted to a committee appointed by a judge, 60 C 440
——not the duty of the borough officers to try to agree with each landowner as to amount of benefits, 60 C 441
damages and benefits are essentially different, 60 C 442
plaintiff enjoining the improvement and failing to show it unjust does not present a case for favorable consideration of court, 60 C 445
the term "benefits" if unqualified includes direct or special and indirect or general benefits, 60 C 446
cannot be assessed upon those who are only benefited as members of the community at large, 60 C 446
nature of assessment; a tax; interest; statute as to, construed, 67 C 162
estoppel from receiving benefits, 68 C 408
burden of proving special benefits, 76 C 278
power to assess is power to tax, to be strictly construed, 77 C 494
cannot assess benefits against State except where power is given expressly or by necessary implication, 81 C 9
all statutory and charter requirements must be complied with; no presumption aids validity; burden on city, 84 C 121, 92 C 431
assessment for new street does not include possible future assessments for curb and sidewalk and sprinkling, 84 C 235
special benefits not affected by damages awarded, 84 C 235
there can be an assessment for a repavement, 84 C 384
sewer assessment clause in Stamford charter, construed, 85 C 552
whether one is benefited or not by an improvement is a question of fact, 88 C 565
failure to define special benefits in the charge, no error, 89 C 343
signing of report by members of committee as individuals without any action as a body is not valid layout, 92 C 431
the assessment of benefits is an exercise of the power of taxation, 95 C 311
a city, having once completed an assessment, cannot without charter authority release it, 95 C 311
——and taxpayer has the right to legal redress against such a course, 95 C 311
city may lay against its own property, 96 C 511
property owned by a city can be assessed for a public improvement, 96 C 511

nature of assessment of benefits, 96 C 519
——distinguished from laying of tax, 96 C 523

§ 12. ——Validity and Legality of Assessment

assessments on those locally and peculiarly benefited are constitutional, 23 C 202, 60 C 116
——though exceeding damages for land taken, 23 C 203
presumption is in favor of assessment for, 28 C 376, 51 C 207
no defense to assessment for benefits that matter is a nuisance to another, 28 C 377
special, peculiar benefits, form no part of object for which highway is laid out, 32 C 475
——such benefits within prescribed limits, assessable, 32 C 476
a sewer assessment determined solely upon street frontage is illegal, 35 C 66
council may assess whole cost of sewers on those specially benefited, 35 C 75
benefits not assessable, on easement held by railroad company in limited portion of land adjoining highway, 36 C 266
——assessable on franchise, where grounded on direct, immediate benefit, 36 C 267
——what benefits are too remote to be assessed on railroad franchise, 36 C 267
macadamizing street is "maintaining street," within city charter, 36 C 374
——not a "public improvement" within such charter, 36 C 374
rails, ties, sleepers, and spikes of street railway company, attached to soil are liable to assessment for, 38 C 431
whole cost of sewer larger than required for ordinary sewage may be assessed on abutters, where sewer relieves surface brook which had become a nuisance, 39 C 284
——and where abutters were found to be benefited in amount larger than assessment, 39 C 285
landowner may be assessed for special benefits though damages are also given, 39 C 288
assessment for benefits not illegal because land was only benefited in connection with adjoining land, 39 C 290
——though adjoining land could not be sold for years, 39 C 290
assessment not invalid because two small pieces of land were omitted by mistake, 39 C 473
paving assessment not illegal because street not paved from curb to curb, 40 C 511
——nor because laid at uniform rate per front foot on lots varying in depth, 40 C 511
——nor because street railway company bound to pave a certain width, was not assessed, 40 C 511
railroad company not specially benefited by street pavement is not liable to assessment, 42 C 283
——easier access to depot, and rise in value of land for building purposes are not special benefits to railroad company, 42 C 283
land occupied by schoolhouse, if not directly benefited by new street, is not liable to assessment, 45 C 463
right of assessing cost of street, on land dedicated for highway, same as if land had been taken in invitum, 46 C 286
——only requisite that city have a right to work and hold it for public use, 46 C 287
assessment for sewer is not illegal merely because of existing sewer, 47 C 91, 62 C 513
——motives for constructing sewer of no consequence, if only the work is legally undertaken, 47 C 92
sewer assessment not illegal because sewer was opposed by all property owners on street, 47 C 93
——nor because sewer cost more than $10,000, 47 C 93
——limitation of $10,000, applies only to public improvements paid for by city, 47 C 93
——not illegal because city ordinance did not fully conform to charter, 47 C 94
land of railroad company held in fee, *held* liable to assessment for sewer, 49 C 40
an improper method of assessing will not make a whole assessment void, 60 C 444
——though it may be reason for reassessment, 60 C 444
assessments for other than special benefits have never been sustained in this State, 60 C 445
——but in case of doubt the statute will be *held* to mean "special benefits," 60 C 445
——unless it affirmatively appears that the assessment was for general benefit, 60 C 445
street railway company required by its charter to repair certain portion of the street failed to do so; borough repaired streets, and assessed benefits to "land and buildings" against the company, 61 C 80
——*held* question to be determined by borough's charter rather than by charter of company, 61 C 84
——question was whether company had received benefits to "land and buildings" rather than liability of company for money expended for it, 61 C 84
a private sewer as a defense to an assessment for a public sewer must be adequate, proper and independent, 62 C 513
——evidence admissible to show that discharge on mudflats is injurious to public health to prove insufficiency, 62 C 512
act, validating assessment, cures irregularities but gives no jurisdiction to make assessment, 73 C 359

mere formal layout of highway not basis for assessment; there may have been a prior dedication, 74 C 189
basis of assessment; work left unfinished, 74 C 483
power of Legislature to compel property owner to repair streets, sidewalks, etc.; to compel railroad to reimburse city for cost of paving, 75 C 452
assessment of benefits resulting from removal of grade crossing, 77 C 494
special benefits must be direct, immediate, appreciable, certain; land of railroad abutting on street, where assessment is for paving, 78 C 193
assessment for change of highway in front of plaintiff's property under Bridgeport charter, 81 C 76
whole effect of improvement must be to increase value of property, else benefits cannot be assessed, 81 C 82
cemetery association is liable to assessment for sidewalk, 83 C 204
repavement of a street basis for assessment, 84 C 384
constitutional to assess one-half street pavement on abutter, 84 C 384
whether one is specially benefited question of fact, 88 C 565
removal of open sewer is a benefit, 88 C 565
whether second assessment can be made for same improvement, quaere, 91 C 709
assessment cannot be enjoined by landowner merely because of alleged illegality or unconstitutionality, 94 C 510
individual who stands by in silence and permits a public improvement under a voidable order cannot complain, 96 C 142
where street railway is bound to pave part of street, its failure to do so no defense to assessment of property owner for paving rest of street, 96 C 144
price does not have to be paid nor funds provided in advance, 101 C 669
——sufficient if means for prompt ascertainment and certain payment of damages are provided, 101 C 669
——this assumed in case of municipal corporation, 101 C 669
——compensation must be provided for before actual occupancy, 101 C 675
under Bridgeport charter, acceptance of report of board of appraisal by council and either expiration of thirty days without appeal or determination of appeal without order of reassessment or setting aside report constitutes taking, 101 C 669
——but title does not vest till compensation is made, 101 C 669
——charter separates legal taking and physical appropriation of property, 101 C 669
——completion of proceedings imposes on city obligation as binding as judgment, 101 C 675
charter provision that compensation shall be "immediately due and payable" after assessments completed, means within a reasonable time, 101 C 669
——and this time postponed to conclusion of appeal to courts if one be taken, 101 C 669
charter provision "that there shall be no appropriation of property" until damages deposited with city treasurer; *held* appropriation meant actual physical taking, not mere legal taking, 101 C 669
——otherwise tax board could frustrate entire project, 101 C 669
time when land is deemed "taken" under New Haven charter, 107 C 439
interest on award of damages does not run pending appeal of landowner to Superior Court or during his or city's appeal to Supreme Court, 107 C 439
interest *held* to run from time building is erected on land subject to easement, not from time proceedings to condemn were begun, 108 C 359
under statute providing that land not be used until amount of judgment is paid or deposited, land is not taken until this is done, unless owner is sooner deprived of use of land, 108 C 371
where no specific provision of statute states when taking of property occurs but formal act of responsible body is required, this act fixes time, 115 C 428
——when no such formal act is required, first actual authorized physical interference with property marks taking, 115 C 428
——provisions of New Haven charter effect taking at time board of aldermen orders condemnation and fixes damages, 115 C 428
assessment is properly laid against whole of tract although only part of it was claimed to be benefited, 115 C 519
——though land had been assessed for water main in one street on which it abuts, it may be assessed for main on another street if both resulted in special benefits, 115 C 519
——subsequent construction of pavement, curbs, sewers and lighting system improper elements, 116 C 402
assessment void if made for improvement which municipal corporation had no authority to make, or where it had so far departed from procedure established by statute as to oust itself of jurisdiction, 117 C 25
plaintiff claimed assessment on its property void because city had no power to acquire by eminent domain land necessary to improvement occupied by State as armory; *held*

——under charter, bureau of compensation may include in estimate of cost of improvement, for purpose of assessing benefits, probable expense of purchase of land, 117 C 25

——though city could not condemn property if it was probable it could purchase it in reasonable time, it could proceed with assessment, including in it estimated purchase price, 117 C 25

——that in view of act of Legislature authorizing sale of armory to city when it could be dispensed with and other circumstances, such probability existed, 117 C 25

benefits to be assessed for improvement must be special, as distinguished from general benefits to public, 117 C 75

——theory on which they rest is that landowner has received increment of value which he should remit, 117 C 75

——widening of street may result in special benefit to abutting owner, 117 C 75

benefits to be assessed must be such as result from public work in question, 117 C 75

——so improvements, made by other landowners subsequent to and independent of improvement are immaterial, 117 C 83

——but rule does not exclude changes in use of other abutting proprietors which are reasonably probable result, 117 C 75

——test is will particular change in conditions be such a reasonably probable result as will affect present value, 117 C 75

benefits to be assessed must be direct, immediate, appreciable and certain, not contingent, remote and uncertain, 117 C 75

——"immediate" does not mean instantaneous, 117 C 75

——period will vary according to circumstances, and is such as is reasonable in view of nature of proceedings, rights and interest of landowner and city, 117 C 75

rule that interest on award runs from time it is payable no denial of "just compensation" though award based on expenditures made by landowner theretofore, 117 C 499

when damages are payable for change of grade under Meriden charter, 117 C 499

only legal basis for assessment of benefits against city for street improvement would be that property owned by city was directly and immediately benefited, 125 C 589

decisions stating principles upon which valid assessment of benefits must rest reviewed, 127 C 617

§ 13. ——Measure and Amount; Set-off Against Damages

peculiar benefits to owner to be considered in estimating damages, 22 C 88

amount of benefit may be subtracted from that of damage, 23 C 189

landowner gets nothing, if local, special benefits, equal damages, 32 C 478

evidence of value of land assessed, may be given by either party, 35 C 77

——if not given, neither party can complain, 35 C 77

assessing owners in proportion to number of front feet, with no regard to square feet inequitable, 35 C 77

rule of assessing landowners for sewer, 35 C 77

——private drain may reduce owner's special benefit, 35 C 80, 62 C 513

——benefits are not reduced in value for mere nonuser of land, 35 C 81

whole cost of sewer larger than required for ordinary drainage, is assessable on abutters, 39 C 284

——especially if benefited in excess of assessment as made, 39 C 285

benefits to adjoining landowners may be deducted from damages for land taken, 57 C 121

——rule applicable in such cases, 57 C 121

——applies, though land taken is owned in common while land benefited is owned in severalty, 57 C 121

where private way is taken for street, the saving in repairs to owners may be considered in estimating benefits, 57 C 124

fact that improvement cost certain sum cannot fix that sum as proper amount of assessment of benefits, 61 C 76

special benefits from change of grade should be deducted from damage sustained, 66 C 413

increased value of plaintiff's land due to private improvements subsequently made by neighbors, not a special benefit available to reduce damages, 66 C 413

privilege to connect with sewer, not actual connection, basis of assessment of benefits, 71 C 200

Legislature may fix proportion of cost or part of work each shall bear, 75 C 452

assessors must use sound judgment, not act arbitrarily; front-foot rule, 76 C 70, 78 C 573

burden on property owner to prove he has suffered special damages to an amount in excess of any special benefits received, 76 C 278

improvements made by neighbors not to be included in special benefits, 76 C 282

assessment of street railway company; cannot include cost of contractor's guaranty of paving for fifteen years, 77 C 219

amount of benefits and damages question of fact; committee findings conclusive, 85 C 237

special benefits may be set off, but not those due to acts of individuals subsequent to the change of grade, 85 C 255, 89 C 343

advantages accruing from the existence of a granolithic sidewalk for which property owner has been assessed cannot be used to cut down damages awarded for a change of grade, 89 C 343
alleged special benefits accruing from an independent public improvement cannot be deducted from special damages, 89 C 344
assessment cannot exceed cost of improvement, 91 C 712
benefits assessed may not exceed actual benefits, 96 C 511
——presumed that property is benefited in the amount assessed, 96 C 511
benefits to be set off against damages, 96 C 520
finding of benefits of a certain sum as specific finding conclusive unless not supported by evidence, 109 C 212
benefits assessed cannot exceed actual benefits received, 112 C 549
where damages are awarded upon basis of certain depth for a business lot, benefits should be placed on same basis, 113 C 40
no assessment against property owner can exceed special benefits he will actually receive, 114 C 483
assessment should be laid against tract as a whole; part benefited cannot be segregated, 115 C 519
benefits restricted to special benefits accruing to a particular landowner, 115 C 616
benefits and damages to be separately determined, 116 C 402
only benefits to be considered are those which result from particular improvement on account of which assessment is made, 116 C 402
when effect of assessment upon front foot basis made under charter provision is to assess sum in excess of actual benefits from the improvement, it is in effect taking private property for public use without just compensation, 127 C 617
assessments made upon front foot basis proper where result is a proper and just assessment, 127 C 620

§ 14. ——Enforcement; Lien

conduct estopping street railway company from claiming charter required it to pave its line at its own expense, 38 C 422
under charter of New Haven, right to assess is not dependent on lien, 38 C 422
——assessment may be collected by action of debt, 38 C 422
foreclosure of lien for benefits; must appear that appraisers were freeholders, 43 C 304
lien of city for assessment not invalid because of informal direction by street board to clerk to file certificate of lien, 48 C 571
under charter of New Haven, assessment for public improvement does not become a lien until action of common council is had and recorded, 51 C 205
——not when the improvement was ordered, 51 C 205
remedy for illegal order to construct sidewalk is either by an appeal, or defending collection of assessment on ground of illegality, 57 C 8
in a foreclosure of a lien for assessments, an averment that all charter requirements have been complied with is sufficient, 58 C 523
——though charter details the proceedings, 58 C 523
where by city charter assessments are made debts, it is on the same footing as other debts for remedial purposes, 58 C 524
an action to foreclose a lien on land for benefits must follow the certificate of lien, 60 C 115
foreclosure of lien for benefits; several assessments not proved by certificate of joint assessment, 60 C 115
——in such case no valid judgment could be rendered, 60 C 115
——an agreement with some, and the assessment of the balance of the fixed sum on other landowners might result in gross inequality, 60 C 442
——the committee of appraisal should apportion the fixed sum upon all persons benefited, 60 C 442
fact that others have paid their assessment is no answer to plaintiff's claim of illegality, 60 C 448
——but its admission cannot have done plaintiff any harm, 60 C 448
on assessment owner becomes a debtor; lien imposed by ordinance indefinite in duration upheld; foreclosure; no adverse possession by owner, 79 C 38
lien may be foreclosed, though action for assessment is barred, 79 C 40
in imposing lien, city acts for State and cannot claim priority for lien against State, 81 C 9
power to assess land of State does not give lien priority over school fund mortgage, 81 C 9
action to collect for laying curb and sidewalk is not one for benefits and damages, 83 C 206
lien based on invalid proceedings void, 84 C 121
charter provision that lien foreclosed like mortgage, does not apply to evidence or burden of proof, 84 C 121
under charter the tender of amount of an assessment and lien but without interest does not discharge the lien, 85 C 552
where an ordinance provides a lien for laying a gutter, there can be no such lien to violate covenant against incumbrances until proprietors have failed to lay gutter and the

work has been done by the city and cost ascertained, 85 C 647
——in cases of assessment for benefits for public works, a different rule prevails, 85 C 647
cannot enjoin collection of street pavement assessment when adequate remedy at law, 94 C 510
effect of complainant standing by until work is done, 94 C 520
inhabitant may prevent release of a valid assessment lien, 95 C 311
——as to power to interfere in tax enforcement, 95 C 311
release of assessment lien not signed by the proper officer is invalid, 95 C 315
property owner who stands by in silence until public work is completed is estopped to claim relief from assessment or lien on ground that proceedings authorizing it were invalid, 96 C 143
municipal property is not subject to lien for assessments, 96 C 512
incidence of lien for benefits determined by terms of statute or ordinance imposing it, 112 C 190
——if no time fixed, it accrues when tax is assessed, 112 C 190
——if not assessed until work is done, fact that work was in progress when a deed was made does not make lien subsequently effective a breach of covenant against incumbrances, 112 C 190
where ordinance provided that lien for assessment should be filed within three months and amendment of charter provided for filing it within one year, ordinance *held* repealed, 115 C 519
——that officer failed to obey direction of board as to when lien should be filed, does not invalidate it if filed within time fixed by law, 115 C 528

§ 15. Procedure

§ 16. ——In General

owners of land taken for street have no right to be heard as to time of opening, 19 C 152
every statutory requisite to be complied with; should appear on face of proceedings, 23 C 208
charter privilege to divert water on land to be strictly followed, 23 C 229
——mere parol agreement with owner confers no estate in the land as against grantee of such owner, 23 C 229
aside from statute, right to lay out highway is not affected by discontinuance of proceedings; by statute assessment is void if road be discontinued before opened, 39 C 114
contract of city to pay damages for land used for highway, on withdrawal of appeal; city may enter on land before paying contract price, 43 C 179
——contract being independent of the appeal, 43 C 181
——forbidding entry is not a rescinding of contract or of a license to enter, 43 C 182
widening of street; street commissioners; private agreement as to expense; liability of city, 46 C 289, 60 C 442
no costs allowed petitioner for attendance and witnesses, 48 C 292
land taken for burying ground; interest of two tenants in common omitted by mistake; *held* condemning party became tenant in common with other tenants, 49 C 162
proceedings to condemn for public use are in rem, 49 C 162
——but only the interests of those made respondents are taken thereby, 49 C 162
under statute, landowner *held* entitled to sue city in a civil action for damages where city refused to act, 49 C 401
——this statute gives no remedy to landowner but simply furnishes a method to be followed by city, 49 C 402
assessment proceedings need not state in words that the land was specially benefited; this may be reasonably inferred from the facts stated, 51 C 206
counsel for municipality has no power to submit question of benefits to arbitration, 58 C 156
damages for change of grade may be determined by arbitration, 64 C 88
consent to change in grade of highway does not waive right to damage, 66 C 320
on layout of highway, necessity of record of committee's report; failure of town to lay out under order of court as defense to payment for benefits, 69 C 32
nature of judgment of court on layout of highway as to benefits and damages; nature of warrant, 69 C 37
landowner not entitled to jury trial to determine amount of compensation but he is entitled to an impartial tribunal, 69 C 437
amendment of proceedings; setting out claims as to vote of municipality, 69 C 469
pending an appeal by one landowner, city entered on land of another to construct work; latter can sue at once, 70 C 459
raising question of Statute of Limitations by demurrer, 72 C 687
motion to dismiss application lies when, 72 C 692
allegations where power to condemn is given by charter amendment, 73 C 506
every requirement of the charter must be followed, 75 C 237
where statute directs payment of damages, judgment should not, 75 C 239
proceedings constitute action; create estoppel, 75 C 243, 319

proceedings under act as to taking over gas and electric light plant by city, 76 C 567
on application by railroad company for appraisers, duty of judge to determine right to take land and inability to take by agreement; statute permitting assessment of compensation for entire estate where subject to estate for life or years not applicable, 79 C 534
neither municipal authorities nor appraisers can determine title to land; acceptance of report creates no estoppel as to claim that certain land was not included by them, 79 C 606
description of land taken, 79 C 606
proceedings to condemn cannot be rescinded after right to compensation is fixed, 80 C 107
——finally giving notice that damages are payable as fixing it, 80 C 107
fact that city did not at all times have money to pay assessment cannot avail landowner who refused to accept assessment as made, 82 C 51
injunction does not lie against exercise of power, where same remedy can be had in legal proceedings, 82 C 157
the proceedings for a public improvement pass a tentative stage when final action is taken on them by proper municipal authorities, 83 C 270
approval by commissioners of the taking of 22/100ths of an acre is not an approval of a former taking of 1/10th of an acre included therein, 83 C 603
when the general allegation that abutting owner is aggrieved is sufficient, 84 C 25
in laying out and altering streets, establishing building lines, the municipal authorities act under limited powers, 84 C 121
——burden on city to show requirements complied with, 84 C 121
history of building a bridge and making changes, admissible to show that city contemplated physical change, 85 C 367
when condemnation proceeding may be brought before a judge, 85 C 602
proceedings to condemn a water company involves a judicial proceeding, not an administrative act, 85 C 664
applicant may withdraw at any time prior to final judgment, unless otherwise provided by statute, if defendant is not injured, 85 C 664
General Assembly may compel an applicant to pursue condemnation proceedings to end or permit him to withdraw, 85 C 664
right to withdraw ends when title has vested or possession taken, 85 C 664
under a special act to condemn a water company, where there are two appraisals, one to see at what price it could be bought, the other to condemn it, the first was part of the proceedings and an exercise of judicial power, 85 C 664
——if first appraisal is refused, both parties are thereby affected, and their legal status is changed, 85 C 664
entire proceedings are one transaction, 86 C 326
application should describe property taken with certainty, 86 C 361
——taking flow of stream above a fixed minimum sufficient, 86 C 361
finding of jurisdictional facts necessary in judgment appointing committee or accepting its report, 86 C 658
city charter *held* not to authorize judgment and execution for amount of award and interest, 88 C 427
until assessment of benefits and damages for sewer has been adopted by common council of Hartford, it may discontinue proceeding already begun and substitute a different layout, 88 C 565
no vote of city to take land for water necessary where law definitely locates reservoir, 89 C 671
——law need not be accepted by city by vote, 89 C 671
case interpreting one charter not authoritative in interpreting others, 92 C 193
municipality must comply with all statutory requirements in taking land, 92 C 431
——this must appear on the face of the proceedings, 92 C 431
Legislature can prescribe steps necessary for city to condemn land, 92 C 432
——it must be done by a committee acting as such, not by members individually, 92 C 432
jurisdictional facts should appear either in order of appointment or judgment on report, 95 C 1
form of application, order, judgment and bond de discontinuance of highway, 95 C 242
presumption of regularity of proceedings for layout after many years, 95 C 317
in petition based on flooding property it is not necessary to include separate tracts which suffer consequential damages, 95 C 377
——not necessary to include in one proceeding lands directly and lands consequentially affected, 95 C 377
street commissioners of Hartford get their power from state Legislature as agents of State, and their vote is what determines the work, not that of common council, 96 C 142
right of taxpayer to enjoin illegal proceedings for public improvement, 96 C 511
——appeal from assessment will not prevent proceeding with work, where question of legality is not raised, 96 C 511
proceedings in name of city by Waterbury park board, 100 C 407

expenses and costs of committee to be taxed, 100 C 408
——not property owner's legal costs and expenses, 100 C 408
condemnation of land in Orange by New Haven; Orange not necessary party, 101 C 191
——its power of taxation not being a property right, 101 C 191
——but an attribute of sovereignty held at will of Legislature, 101 C 191
municipality must comply with charter and statutes, 101 C 191
——compliance must appear on the face of the proceedings, 101 C 191
requirement that survey be "annexed" to report met by filing copy with committee of aldermen, 101 C 191
——courts look through literal meaning of words and forms of procedure to essential purpose to be served, 101 C 198
action by abutting owner where town takes no steps to ascertain damages resulting from change of highway grade, 104 C 452
every requisite of statute must appear on face of pleadings to be complied with, 109 C 621
seeking in one action damages for trespass, and also reassessment, *held* not election which debars latter relief, 113 C 651
taking of land by highway commissioner; description should be given in connection with assessment; amount taken unless unreasonable will not be reviewed by court; work may proceed upon overt act of filing assessment, 113 C 651
assessment giving name of owners of land upon certain street, number of front feet and amount assessed is sufficient, 115 C 519
vote of board of aldermen accepting layout and assessments as recommended, concluded "pending bond issue for same"; *held* no intent that city should ultimately pay for improvement by bond issue, exempting those specially benefited, 117 C 25
ordinarily judgment appointing appraisers closes judicial part of proceedings; what remains is of administrative character; appraisers discharge quasi-judicial function, 117 C 238
——in certain classes of cases final judgment may be followed by further judgment, 117 C 238
——if landowner is dissatisfied with report he may file remonstrance; court may accept or reject report; acceptance is final judgment from which appeal lies, 117 C 238
where after demurrer to application to condemn land was overruled, defendants refused to plead further and moved for judgment, court correct in requiring hearing before arriving at decision, 124 C 444
proceeding for condemnation of land for Merritt Parkway *held* properly brought under § 1528 (Rev. 1930) pertaining to trunk line highways, 125 C 405
——plaintiff's contention that provisions of 1935 act made it other than trunk line highway not sustained, 125 C 406
——from review of legislation *held* 1935 statute intended to supplant previous legislation making it a trunk line highway, 125 C 406
charter provision that no vote of common council ordering public improvement "which shall require" expenditure of more than $100,000 shall be valid unless approved by vote of city meeting, 125 C 587
——test is cost to city as estimated by board of street commissioners rather than ultimate cost by reason of facts which neither board nor common council could anticipate, 125 C 587
——so where on appeal assessment of damages was increased so as to bring total over $100,000, charter provision did not apply, 125 C 587
in bringing matter of award of damages for taking of land into court, highway commissioner was representative of State and his acts are in effect its acts, 129 C 113
taking is complete when assessment is filed with clerk, 129 C 251

§ 17. ——The Assessment

appointment of assessors by justice is a ministerial act, 12 C 467
appraisers not to act until it is ascertained that parties cannot agree, 13 C 410
——what is sufficient evidence that parties cannot agree, 13 C 410, 32 C 481
commissioners have no power to appraise lands only remotely affected, 15 C 324
finding party benefited to specified amount implies no damage sustained; such finding is sufficient, 23 C 211
inability to agree as to damages sustained; acceptance of committee's report is evidence of assessment laid, 23 C 212
records should show that assessing committee were disinterested freeholders, 25 C 429
——assessment, if invalid, renders invalid an agreement as to benefits, 25 C 429
doings of authorities in assessing, cannot be collaterally impeached, 39 C 471
alternative assessment of benefits and damages is erroneous, 48 C 288
charter provision that committee appointed by common council should assess; assessment by committee appointed by mayor but adopted by council *held* legal, 55 C 123
——virtually an assessment by council, and not affected by want of authority of committee, 55 C 124

delay in instituting assessment proceedings *held* justified by litigation over power and belief that no one would claim damages, 68 C 72
assessment by committee, approved by council, equivalent to assessment by council, 68 C 81
necessity of failure to agree as basis of action, 73 C 348
damage may be determined from inspection of premises, photographs, etc., 73 C 359
effect of appointment of committee at once on filing of application; use by committee of form prepared by counsel, 74 C 189
award can be attacked only for causes existing prior to or contemporaneous with its rendition, 74 C 452
proceedings before appraisers and on return to court, 75 C 237, 76 C 565, 79 C 526, 606, 80 C 38
waiver of objections to appraisers by failure to appeal, 75 C 238
proceedings should be recorded, 75 C 242
including in sewer assessment part of cost of trunk sewer; adoption by city council of report as to assessment makes it act of council, 76 C 70
whether committee ought to report one assessment, not two conditional ones, quaere, 82 C 378
committee must consider all evidence for all purposes that it was offered and claimed, 82 C 460
committee cannot consider evidence after reaching its conclusion, 82 C 460
damages and benefits separately determined, 84 C 235
the fact that neither party may accept report of appraisers does not make appointment nugatory, 85 C 664
a single appraisal made in direct condemnation proceedings with opportunity to withdraw within a reasonable time is sufficient protection of the public, 85 C 664
procedure of two appraisals not unusual or unconstitutional though expensive, wasteful of time, and cumbersome, 85 C 664
alternative reports of committee, 86 C 661
in asking for appraisers it is sufficient to follow language of act permitting their appointment, 87 C 194
it is doubtful whether a supplemental assessment can be made to defray costs that are an additional expense unless authorized by the statute, 91 C 709
——not permitted if completed work does not exceed the estimate, 91 C 709
appraisers can examine in the absence of the parties public records that are afterwards admitted, 92 C 31
proceedings for determination of benefits and of damages are separate and distinct, 109 C 212
nature of proceeding for appraisement of damages, 113 C 43
where act contemplates separate appraisal of damages and benefits, ordinarily this procedure should be followed, 113 C 323
——but where method adopted reaches same results and no injustice appears, it will be upheld, 113 C 323
application by state park and forest commission for assessment of compensation under statute giving it power to take land in name of State for which compensation is paid by State, is case "brought by the State," 116 C 119
application by park and forest commission for reference to state referee under § 5069, Rev. 1930, for award of damages, instead of to three appraisers as provided in § 2167, Rev. 1930, *held* correct, 116 C 119
——former statute applicable to all condemnation proceedings by State and repealed inconsistent provisions in § 2167, 116 C 119
——fact that § 2167 was included in revision of 1930 not controlling, 116 C 119
formerly awards and compensation for taking of land were required by various statutes to be made by three persons as committee or appraisers, 116 C 119
——policy of substituting state referee afterward extended to all cases, 116 C 119
any limitation upon easement taken for widening street must be definite and certain, 116 C 341
——provision that if right reserved be later taken, payment would be made after hearing or conference, not proper, 116 C 341
——rights reserved could be taken only by ordinary process for condemning land, 116 C 341
board of street commissioners in assessing benefits and damages for widening street voted that technical encroachments of trees and walks would be allowed to remain and if removed in future an award would be then made; *held*
——that as charter and ordinances did not confer on board right to limit easement the vote, not approved by common council, was ineffective, 116 C 341
——that the limitation of the easement was not made with the requisite certainty, 116 C 341
——that any future destruction of rights could only be compensated by method fixed in charter, 116 C 341
——and there was error in not considering trees and walks as elements in awarding damages, 116 C 341
findings that market value of property was same before and after new street line and that damages and benefits were equal no basis for conclusion that they were each $1, 116 C 402

——both might be true and yet both damages and benefits amount to considerable sum, 116 C 402

——court failed to regard damages and benefits as matters to be separately determined, 116 C 402

where city by charter had jurisdiction to make assessment it was binding on property owner unless appealed from and cannot be collaterally attacked by injunction, after improvement completed, except for jurisdictional defect, 117 C 25

——and where bureau of compensation had jurisdiction to determine whether property was benefited, its determination might be error of law but not act beyond its jurisdiction, 117 C 25

——so that proof in injunction proceeding that owner's property was not benefited was aimed to show only error in law, and was properly excluded, 117 C 25

assessment against property not void because when made city had no power to acquire property necessary to improvement by eminent domain, 117 C 34

——assessment proper if it was reasonably probable that within a reasonable time it might be able to purchase property, 117 C 25

committee appointed to award amount due for taking of land has no power to pass upon validity of claims of defendants other than owners to share in award, 124 C 445

fact that highway commissioner acted on advice of department engineers rather than on own knowledge did not invalidate award, in view of terms of statute, 125 C 407

§ 18. ——Appeal and Reassessment

§ 18(1). In General; When Appeal Proper

excessive damages to landowner is no ground for reassessment, 25 C 187

common council of Hartford may assess whole cost of sewer on parties especially benefited, 35 C 75

——an appeal carries up only appellant's apportionment, 35 C 76

section of Meriden charter *held* not repealed by subsequent acts de appeal from assessment of damages, 39 C 113

doings of authorities in assessing are not collaterally impeachable, 39 C 471

one appealing from street assessment must state the grounds of relief, 40 C 510

——"that assessment was not laid according to law" is too indefinite, 40 C 510

one assessed and not appealing, can raise question of jurisdiction or power of board to assess, on petition to foreclose lien, 46 C 290

appeal by one aggrieved; statute does not repeal charter provision allowing appeal to the court, 46 C 502

——in such case, appeal may be either to court, or to judge in chambers, 46 C 503

order of assessment need not recite that the amount is "porportional and reasonable," 51 C 206

——if apportionment was not equal and fair, an appeal lies, 51 C 206

——if no appeal is taken, assessment is presumed to be fair and equal, 51 C 207

acceptance by the court of doings of committee in sewer assessment *held* in the particular case, unnecessary, as party's remedy was by appeal for a reassessment, 60 C 447

failure of competent tribunal to give damages as judgment permitting appeal, 68 C 409

appeal, not action to remove lien, proper way to reach errors in assessment, 75 C 422

right to assess not challenged under allegation of excessiveness and inequality, 84 C 319

an appellant who bases his action on the proceedings cannot say they are void, 84 C 321

statutory provision for reassessment can only be invoked by those whose land is taken, 85 C 1

appointment of a committee to appraise damages for land taken for a public use is a judgment from which an appeal lies, 85 C 663

if no damages or benefits are to be paid, thirty days for appeal runs from acceptance and recording of order by board of aldermen, 86 C 326

acceptance of committee's report calls for judicial discretion; an appeal lies, 91 C 639

appearance before board does not prevent appeal which contests validity of proceedings, 92 C 438

after expiration of time for appeal from assessment of benefits, city cannot rescind, 95 C 311

statute for assessment by city department constitutional, 100 C 605

——provided there is method of appeal to the courts, 100 C 605

——it may provide that original assessment be final unless appealed, 100 C 605

one assessed benefits may appeal as well as one assessed damages, 101 C 669

assessment of benefits and appraisal of damages are one proceeding and person assessed may appeal for defects in latter, 101 C 682

appeal to Superior Court by landowner in condemnation proceedings is still same appeal upon city's appeal to Supreme Court, 107 C 444

effort to pursue ineffective action based upon invalidity of proceedings is not such elec-

tion as to prevent landowner seeking reassessment of damages by appeal, 113 C 651

power of party seeking to condemn and necessity and propriety of taking, are adjudicated and concluded by judgment appointing committee to assess damages; remedy for erroneous decision is by appeal, 117 C 230

——judgment conclusive on parties as to every question which was or might have been presented and determined, 117 C 230

right to review by court of action of appraisers in condemnation proceedings is in accordance with settled practice, 117 C 230

——where Legislature, in charter, fails to make specific provision for review, intent to depart from practice cannot be implied, 117 C 230

——to construe charter as denying landowner right of judicial review of action of appraisers would open serious question of its constitutionality, 117 C 230

——right of review fairly implied in charter, 117 C 230

plaintiff did not pursue remedy by appeal but asserted right of review of errors in condemnation proceedings in action to enjoin defendant from occupying property; *held* plaintiff not entitled in this independent action to review of claimed irregularities in former proceedings, 117 C 230

comments on correct procedure to secure review by a court of actions and rulings of committee or referee, 118 C 350

decision as to necessity for taking by party to whom right to condemn is delegated is subject to judicial review to determine if unreasonable or in bad faith or in abuse of power conferred, 124 C 437

——party need only allege in application to court that he has determined the necessity, leaving burden of attack on adverse party, 124 C 437

——question may be raised by answer to application for appointment of appraisers, 124 C 437

——where statute made decision of appraisers final this did not prevent review in courts as to questions of law, though it precluded review of question of value as one of fact, 124 C 438

proper parties to appeal in assessment proceedings, 127 C 24

where state referee has reason to believe that court will be called upon to determine correctness of his conclusion as to damages allowable for possible future changes in use of land taken for highway, he should find such subordinate facts as will fairly present question, 127 C 456

§ 18(2). Procedure in Superior Court

unauthorized proceedings of jury on reassessment set aside, 21 C 320

juror is not disqualified by relationship to taxpayer of town, 28 C 569

right of peremptory challenge on assessment, 28 C 570

judge of Superior Court on appeal from sewer assessment is bound to notice judicially city charter, 35 C 74

reassessment by jury of damages from highway layout; absence of juryman may be waived, 36 C 308

questions as to amount of assessment can be made only on appeal therefrom, 38 C 433

appeal from assessment, does not bring up entire apportionment for review, 39 C 471, 35 C 76

on appeal from assessment, appellant cannot show a former different assessment recommitted by common council, 39 C 471

——nor that damages allowed another were excessive, 39 C 472

——nor that assessments on different sides of street were unequal, 39 C 472

——but same admissible for purposes of comparison, 39 C 473

——nor that widening of street was unnecessary and unreasonable, 39 C 473

upon appeal the assessment may be approved, increased or diminished, 48 C 416

recommitment of cause to committee is a matter in discretion of the court, 57 C 124

committee presumed to act in accordance with law, 71 C 189

power of Superior Court on application for reassessment, 74 C 189

appraisers as witnesses to questions which arose on hearing; failure to include ruling in report ground for recommittal, not rejection, 75 C 238

evidence on appeal must come within reasons of appeal, 77 C 667

finding of slight discrepancy in measurements of committee and of landowner not finding that former's is too large, 78 C 571

committee must determine all issues of law and fact involved in its conclusion; what facts to be found, 80 C 248

contents of finding on appeal after remonstrance to committee's report, 80 C 248

matters open on remonstrance; harmless error disregarded, 80 C 248

appeal from assessment by municipal board; assessment must be shown to be unfair and unreasonable, 81 C 81

committee's finding not set aside because judge thinks it did not weigh the evidence, 82 C 460

limited power of committee in making reassessment of benefits and damages, 84 C 234

under charter provision, *held* an appeal from assessment of benefits and damages considers only the cases of those who appeal; there is no general reassessment, 84 C 234
appraisal made by committee on appeal is as of date of original assessment, 84 C 235, 85 C 238, 90 C 240
alleging that assessment was excessive and inequitable does not raise question of power to make same, 84 C 319
appeal is limited to reasons set forth in it, 84 C 319
appeal to Superior Court from assessment for repaving under Bridgeport charter not a trial de novo; assessment valid except as challenged, 84 C 383
——not strictly an appeal, 84 C 383
appeal to jury of six invoked only by one whose land is taken; not by town, 85 C 1, 237
committee's report conclusive unless based on error; how reviewed, 85 C 237
amount of benefits and damages question of fact; committee findings conclusive, 85 C 237
Superior Court has jurisdiction to consider damages for injury to access under a former decision, 85 C 367
on appeal, court only considered whether assessment inequitable and unjust, not whether charter requirements complied with, 92 C 193
committee should not assume to pass on demurrer, 92 C 193
report where ruling on evidence questioned, 92 C 193
statements in remonstrance do not take place of report, 92 C 193
where appraiser's report is clear, testimony from witness as to scope of hearing before them improper, 100 C 459
on appeal, city may without special defense, offer evidence that part of land was already dedicated to public use, 108 C 205
under charter providing for separate appraisal of damages and assessment of benefits, appellant sustains burden if final assessment is found wrong, 109 C 212
——if assessment not attacked, committee may adopt that of city council, 109 C 212
action of committee in visiting premises as evidence, 109 C 212
——court will not find committee used different and inconsistent methods of valuation where record does not disclose it, 109 C 212
report of committee only to be set aside on same principle as findings by court or jury, 109 C 212
——damages must be so disproportionate as to indicate mistake, partiality or prejudice, 109 C 212
under West Hartford charter appeal is for reassessment alone, and appellant cannot attack validity of proceedings, 111 C 27
where appellant claims other land than that included in assessment will be affected, he must adapt his pleadings to that end, 111 C 27
failure to specifically find value of land before and after taking not harmful error, 111 C 237
upon appeal from assessment by highway commissioner no question of validity of proceedings can be raised; nor can State be sued for illegal entry, 113 C 651
amount taken unless unreasonable will not be reviewed, 113 C 651
proper procedure in assessment by municipal authorities and upon appeal, outlined, 114 C 483
——where damages are increased or benefits diminished, judge should reassess benefits, 114 C 483
——not proper merely to deduct full amount of special benefits he finds due, from damages, 114 C 483
——reassessment may not in any case exceed benefits received by the property owner, 114 C 488
——and if municipal authorities do not furnish proper basis for making reassessment, trial judge cannot act, 114 C 488
——on appeal reassessment cannot be based upon independent determination of special benefits various owners have received, 114 C 489
what court must have before it to make reassessment on appeal, 114 C 490
appeal from benefits and damages should determine them finally but should not award damages against city, 114 C 491
——if city does not pay appellant may sue it, 114 C 491
where on appeal court increases damages or decreases benefits of appellant, difference cannot be reassessed against others benefited unless proceedings by city authorities show actual benefits assessed by them, 115 C 624
——court has no power to make independent assessment of benefits against others than appellants unless claim is made that reassessment would result in assessing benefits in excess of those actually received, 115 C 627
on appeal court is not concerned with interest due to property owner for failure to pay damages, 115 C 624
——judgment should merely determine amount of damages and benefits, 115 C 624
provision of charter of Hartford that all appeals from one assessment and appraisal in public improvement shall be tried as one case, makes relevant evidence offered upon

any appeal proper for consideration in other appeals, 117 C 75

——procedure adopted in instant case did not make inapplicable this rule, 117 C 75

remonstrance must specifically state errors which it is claimed were committed at hearing before committee, 117 C 75

remonstrance should be overruled if trial judge concludes conclusions of committee were reasonably supported, 117 C 75

——when appeals are taken it is duty of Supreme Court in turn to determine if evidence reasonably supported committee's finding, 117 C 75

——primary question is then effect of evidence; that trial judge made use of evidence not properly to be considered not vital, 117 C 82

——if committee used evidence not properly to be considered that might be ground for relief; but such conduct must find support in report or be stated in remonstrance, 117 C 82

nothing in charter of Hartford which makes inapplicable conclusion in Bishop v. Meriden that judgment on appeal from appraisal or assessment should not award money damages and court should not fix amount of interest, 117 C 87

——implied in charter that judge can issue execution for costs; hence any judgment for money damages would be unenforceable, 117 C 87

——moreover, in appeal from assessment of benefits only, judge would not be in position to offset benefits against damages as provided in charter, 117 C 88

——and in appeal involving both damages and benefits he could not preempt right of city, given by charter, to determine whether there should be offset or not, 117 C 88

court cannot, upon remonstrance, retry issue of fact, 122 C 455

——errors of judgment as to the value of property cannot be corrected, 122 C 455

——remonstrance should specifically allege respect in which error is claimed, 122 C 455

judgment in appeal from compensation awarded by highway commissioner for taking land should merely have determined amount of damages for the taking; should not be awarded against commissioner, 127 C 464

on appeal from assessment Superior Court had authority under provisions of Waterbury charter to modify assessment to accord with correct rule, 127 C 617

§ 18(3). Effect of Appeal

pendency of appeal for reassessment of damages for alteration of highway does not affect acceptance of layout by town, 53 C 495

effect of appeal on approval of report of street commissioners by city council, 70 C 466

appeal from order of railroad commissioners as to taking of land for street railroad operates as supersedeas and suspends proceedings, 81 C 16

where appeal does not raise legality of assessment nor prevent work being carried on, taxpayer may restrain proceedings by injunction, if illegal, 96 C 511

charter provision requiring time for opening of improvement to be fixed; *held* time could not be fixed pending appeal from assessment of benefits, 101 C 669

award not payable under New Haven charter until land is taken, that is, is actually appropriated, or until any appeal is finally disposed of, 107 C 440

——unless city gives security and takes possession, landowner appealing and so retaining possession of land not entitled to interest, 107 C 440

——nor is he entitled to it pending appeal to Supreme Court, 107 C 440

——but diminution in value of use of property caused by proceedings, pending an appeal, may be considered on appeal, 107 C 440

when damages are payable for change of highway grade under Meriden charter, 117 C 499

——if no appeal, then within reasonable time after acceptance of report of board of compensation by common council, 117 C 502

——taking of appeal suspends time until its final determination by court, 117 C 499

——fact that this is delayed by appeal to Supreme Court, nil sig., 117 C 499

§ 19. ——Notice

notice of appraisers of land damage, when sufficient, 13 C 398

notice to person benefited required, 19 C 152

notice to party of meeting to assess benefits *held* not required, 23 C 212

appellant not entitled to notice of recommittal of first report, and subsequent proceedings, where he was notified and appeared in the first instance, 39 C 472

notice of decision by board of review as to assessment is not required, where party had notice of meeting, 43 C 307

——omission of clerk to record decision does not invalidate assessment, though city charter requires record to be made, 43 C 307

on hearing in damages for condemnation, notice to president of railroad company *held* notice to company, 52 C 281

where town changed grade without notice or an opportunity for hearing, adjoining owner may sue in an action at law, 63 C 431

——and town *held* to waive right to object to a defective complaint by going to trial on merits, 63 C 431

owner need not give notice of claim for damage from change in grade of highway, 66 C 320

limitation of appeal to certain time after notice; effect where notice published more than once, 73 C 68

change in nature of improvement after notice requires further notice, 74 C 27

statutory provision as to notice by publication not exclusive; notice to life tenant and estate as binding remaindermen; failure to give notice to one cannot avail another, 75 C 420

notice of first step in proceedings sufficient, 75 C 442, 86 C 326

notice limiting appeal under special act; must indicate that assessment is completed, 78 C 520

notice of establishment of building line must be given landowners of record; notice to husband of such insufficient; effect of report and record of municipal board as to notice; no laches, where one not notified sought relief as soon as facts discovered, 81 C 305

if ordinance requires notice to be published before assessment is laid, it is necessary requirement, 84 C 122, 87 C 573

——publication of notice for widening street does not justify establishment of building line four years later, 84 C 122

when newspaper publication not required, 86 C 326

property owner, duly notified at inception of an assessment proceeding, is chargeable with notice of subsequent steps, 86 C 326

presumption of notice to property owners, 86 C 326

notice may be by mail, eight to ten days being sufficient, 86 C 361

a charter provision requiring notice before taking land is not affected by the requirement of a finding of necessity, 86 C 361

notice to property holder necessary unless he voluntarily appears, 86 C 573

no notice necessary to one whose land has not been taken and injured, 86 C 573

one waives defect of failure to give notice if he appeals from assessment, 86 C 573

mere liability to future assessments does not make land "affected" by improvement, 86 C 573

assessment without notice to landowner invalid as to him, 88 C 78

failure to provide in law for notice to landowner does not invalidate assessment, 88 C 78

the seizure of property is sufficient notice in condemnation, 90 C 584

in condemnation, statute contemplates the giving of notice, 90 C 585

neglect to give required notice is fatal defect, 92 C 432

only persons through whose land highway is laid entitled to notice and damages, 95 C 317

notice of assessment under Hartford charter as matter of public record, 95 C 474

no determination has any binding effect upon landowner without notice to him and opportunity to be heard, 113 C 657

purpose of statute de notice and payment to incumbrancers is to protect their interest; previously held that mortgagee had no interest in award, 116 C 601

——lack of notice may be waived, 116 C 601

——and is not of material significance where incumbrancer does not question amount of award or legality of proceedings, 116 C 601

——and notice waived by bringing action for money paid owner as award, 116 C 601

EQUITABLE CONVERSION

See also WILLS § 57

conversion in sale upon purchaser's option, 67 C 62

equitable conversion results from existence of power to convert realty into personalty, or personalty into realty, which has not been exercised, 70 C 196

——under will; what law governs, 70 C 196

——by direction in will to mingle real and personal property in common residue for division, 70 C 214

by direction in will to sell land and, after paying certain debts, distribute proceeds; who may claim, 71 C 521

by direction to sell with gift of proceeds to alien, 74 C 138

conversion relates back to testator's death, 75 C 502, 691

equitable conversion is not an inflexible rule of law; rests on equity and considers the results to be obtained, 83 C 235

equitable conversion by will regarded as a gift of personal property from date of death, 83 C 235

where there is an equitable conversion, sale of real estate under a foreclosure does not change the situation, 83 C 235

equitable conversion is a gift by will of proceeds of real estate; is to be regarded as one of personalty, not realty, 85 C 490

in equity, estate of one who has agreed to sell land becomes by conversion personal property; on his death, it is so dealt with, 109 C 307
basis of doctrine of equitable conversion whereby for certain purposes real estate is considered in equity as personal and personal estate as real, is intent of party creating a right in property, or in case of contract, intent of parties to it, 120 C 393
——application in devolution of estates, 120 C 394
where will directed sale of real property and distribution of proceeds, doctrine of equitable conversion applied, 123 C 196
——beneficiary had election to take real property or proceeds, 123 C 196
——where real property was distributed to and accepted by him, reconversion took place and he acquired title only on distribution, 123 C 196
——hence where beneficiary entitled to exemption of real estate from taxation, this would not apply to tax levied before distribution, 123 C 196
doctrine of equitable conversion is application of principle that equity regards as done what ought to be done, 123 C 196
——money directed to be employed in purchase of land or land directed to be sold and turned into money are considered that species of property into which will or other instrument directs it converted, 123 C 196

EQUITY

§ 1. General Rules and Maxims
2. Clean Hands Doctrine
3. Jurisdiction and Powers
4. ——In General
5. ——Adequate Remedy at Law; Irreparable Injury
6. Relief against Legal Proceedings
7. Relief against Forfeitures
8. Laches
9. Pleading and Practice

Note: This title deals mainly with general principles and other titles, some of which are suggested in the cross-references, should be consulted for the application of equitable principles and remedies in specific situations.

See also Accounts and Accounting; Cloud on Title; Contracts; Contribution and Reimbursement; Deeds § 14; Equitable Conversion; Fraud § 13; Injunction; Interpleader; Jurisdiction; Jury and Jurors § 4; Liens § 14; Mandamus; Mistake; Mortgages § 25; Reformation of Instruments; Specific Performance; Specific Restitution; Subrogation; Trusts §§ 7, 8; Vendor and Purchaser

§ 1. General Rules and Maxims

equity will not relieve against statute, in absence of fraud or mistake, 1 R 177
will not interpose to relieve against negligence of petitioner, 1 R 309
when jurisdiction is once acquired, court holds case for full relief, 1 R 366, 44 C 460, 60 C 190
he who seeks equity must first do equity, 2 R 39, 10 C 251
does not let trust fail for want of trustee, 8 C 453, 54 C 345
plaintiff must show an equity superior to that of defendant, 10 C 250
where equities are equal the legal title prevails, 10 C 250, 13 C 395, 32 C 259, 261, 33 C 25
petitioner must have what interest to sustain suit, 14 C 347
first in time, strongest in right, 26 C 154, 31 C 490
——where equities are equal and neither party has legal title, 26 C 154, 31 C 490
looks distrustfully on restraints on right of redeeming mortgaged property, 38 C 436
cautious in interfering with municipal prerogatives, 40 C 484
equity looks upon that as done which ought to be done, 50 C 111
equitable remedies existing against the party in his lifetime, exist equally against his legal representatives, 50 C 488
every case requiring equitable relief has its corresponding mode of redress, 51 C 69

no one can claim at same time inconsistent rights de same subject, 51 C 160
no one can have an inequitable defense originating in equity, 51 C 520
where one of two innocent persons must suffer, loss should fall on him who caused it, 54 C 461
one failing to read contract is not without remedy where his failure has been induced by act of the other party, 54 C 510
once a mortgage always a mortgage, 59 C 178
equity jurisdiction once obtained will be held until complete justice is afforded, 60 C 190
one who buys land knowing of a right of way over it may be compelled to recognize it, 72 C 199
equity regards that as done which ought to be done, 72 C 720, 76 C 367
equity aims to do complete justice, 73 C 589
what honor and good faith requires man to ask for the benefit of another, equity will favor, 75 C 342
equitable vested interests are alienable and attachable, 76 C 528
equity favors family settlements, 79 C 644
State, seeking equity, must do equity; is subject to equitable defenses and cross-complaints, 81 C 9
——town has no equity to claim priority of lien estabished by authority of State as against State, 81 C 9
relief may be equitable, though in form of money damages, 81 C 189
instrument, on valuable consideration, purporting to convey land, gives rise to equitable title, which, after eighty years, will be presumed to have drawn legal title to it, 81 C 228
equity gives effect to obvious intent of parties by construing several acts as one, 82 C 148
equity looks through form to real nature of the transaction, 82 C 152
payment of dues in benefit society mistakenly but in violation of statute does not entitle one to any favor in equity, 82 C 315
as between equities, the legal title prevails, 82 C 511
rules of equity govern in all civil actions, 82 C 559
although there is a merger of legal and equitable estates, the two may be treated as distinct, 85 C 379
the maxim that he who seeks equity must do equity does not require defrauded party to restore consideration before seeking to set contract aside, 85 C 567
equity may refuse to enforce contract where consideration is disproportionate to benefit to promisee or damage to promisor, 87 C 24
owner of beneficial interest in stock transferred to another merely to qualify as director has superior equity to creditor of latter, 87 C 601
creditors of insolvent corporation treated alike in equity unless law provides otherwise, 88 C 185, 91 C 361
mutual debts created before insolvency can be set off if equality of distribution in insolvency is not thereby destroyed, 88 C 185
one who fails to make out case of equitable relief may pursue claim for damages if cause of action is properly alleged, 90 C 281
rule that equity will treat that as done which ought to be done is not applied to case of attempted change of beneficiary of fraternal association contrary to its by-laws, 91 C 115
costs in equity are in discretion of court, 92 C 345
equitable considerations not conclusive upon sovereign State, 99 C 385
——but law, including constitutional law, follows recognized course of fair dealing, 99 C 385
statutory obligation cannot be set aside for equitable considerations, 101 C 200
he who seeks equity must do equity, 101 C 614
equity looks to the substance and not the form of the transaction, 101 C 619
Practice Act, though permitting administration of legal and equitable rights in one action, has not changed relief to which one is entitled on given state of facts, 103 C 285
in pari delicto as between estate and creditor where administrator failed to settle estate as speedily as he should and to obey will, 103 C 354
one who buys land with knowledge of previous contract to sell to another, takes title subject to latter's equities, 105 C 408
in action for injunction to enforce restriction in land development scheme amount of damages to plaintiff not regarded, 105 C 464
cestuis que trustent under declaration of trust of land become in equity owners of the land, 106 C 694
rule barring nondiligent litigant from securing rehearing not applicable where State is interested for reasons of public policy, 109 C 47
where equities in appellee's favor, appeal relating to pleading and procedure will not prevail unless adjective law requires, 109 C 292
cause of action based on personal liability of trustee is not action to enforce trust, but is action at law, 113 C 429

family settlements highly favored by courts of equity and will not be disturbed for any ordinary mistake, 114 C 325

party cannot demand aid of equity to enforce obligation of other party to instrument, disregarding equally binding obligation upon him arising out of instrument, 114 C 467

——he who seeks equity must do equity, 114 C 472

when court has before it a proper proceeding in equity it is free to apply maxim that equality is equity, 115 C 193

where there are several creditors in single fund inadequate to pay all, general rule is that of equality, 115 C 193

situation where several parties suffer injuries by reason of single accident and amounts recovered against insured exceed obligation of insurer, 115 C 193

——court reluctant to recognize priority based on time of bringing action or obtaining judgment, 115 C 193

——where interpleader brought by insured, maxim that equality is equity applies, 115 C 193

when one, knowing rights, takes no steps to enforce them until condition of other party has changed so that if rights be then enforced he cannot be restored to former state, delay becomes inequitable and operates as estoppel, 116 C 629

equity will not suffer a party to lie by until event of experiment shall enable him to make selection with certainty of profit, and without loss any way, 116 C 630

application of maxim that equity regards that as done which ought to be done, 117 C 475

——necessary that there be some existing property or specific subject-matter upon which doctrine may operate, 117 C 477

——not applicable to create a trust where bank without authorization released bills of lading attached to drafts without collecting latter, 117 C 472

equity will look through corporate organization to determine real interest of parties involved in certain cases, 118 C 17

——as where corporation is mere sham or device to accomplish ulterior purpose, or mere instrumentality or agent of another corporation or individual owning all or most of stock, 118 C 17

——to do so in absence of circumstances of that nature would be to thwart public policy not uphold it, 118 C 18

relationship between depositors in savings department of commercial bank and assets of that department not within common-law conception of equitable ownership, 119 C 115

——bank has beneficial interest in and legal title to investments, 119 C 115

equity will scrutinize with great care mortgage given to attorney by ignorant and frightened client; doubt will be resolved in favor of client, 119 C 253

equitable right of purchaser of portion of tract covered by mortgage, free from incumbrances, to have burden of mortgage fall primarily on land retained, 119 C 355

while statutes and rules authorize joinder of both legal and equitable matters and claims for relief in same complaint, distinction between equitable and legal causes has not been abolished, 122 C 507

volunteer not entitled to equitable relief, 123 C 237

equity can always look behind technical legal title if necessary to work out under its principles the rights of the parties, 123 C 232

——thus in execution of principle that once a mortgage always a mortgage, equity will look behind legal title and if necessary determine rights of parties in disregard of it, 123 C 244

regards as done that which ought to be done, 125 C 581

principle of balanced equities, 126 C 357

court of equity will look through corporate veil in certain circumstances, 128 C 221

——court determines whether or not to do so in pursuance of its judicial function to uphold ends of public policy, 128 C 222

where husband paid for automobiles purchased by wife and registered in her name to protect them from his creditors and they were attached as her property, he could not claim them as equitable owner, 128 C 506

whether or not plaintiff grantee of lot was equitable assignee of any claim of grantor for money damages by reason of his building on adjoining lot by mistake, quaere, 129 C 20

executor and estate were not unjustly enriched by funds deposited in name of estate by coexecutor who had misappropriated them from estate of which he was conservator, 129 C 576

though cause of action one in equity, equity should follow the law with respect to applicability of Statute of Limitations, 129 C 681

§ 2. Clean Hands Doctrine

a man cannot take advantage of his own wrong or fraud, 21 C 465, 54 C 446

he who comes into equity must come with clean hands; maxim *held,* on facts, inapplicable, 60 C 587

unclean hands principle does not apply as respects distinct transactions, 64 C 102

unclean hands doctrine; applied where defendant seeks to avoid effect of agreement

signed by her for fraudulent purpose, 64 C 153
as regards contract, it requires good faith to all who would be affected by it, 66 C 493
——thus where one conveys property to stranger to deceive wife in the matter of payments for their children, he cannot compel reconveyance, 66 C 493
equity will not give relief where illegal contract is partly performed, 73 C 513
equity will not aid him who comes with unclean hands, 80 C 189, 87 C 533
clean hand doctrine does not apply where wrong is not to defendant but to public or a stranger, 87 C 601
the rule that one seeking equity must come with clean hands does not apply to collateral or extraneous matters, 90 C 400
clean hands doctrine, 106 C 216
a man may not take advantage of his own wrong, 110 C 507
——thus lessor cannot avoid lease for breach of covenant against subleasing when he is himself the sublessee, 110 C 507
conduct of husband in New York divorce suit does not disqualify him in conversion suit here through application of "clean hands" doctrine, 113 C 306
clean hands doctrine applies only with reference to conduct in particular transaction involved in action, 113 C 306
if party's claim grows out of or is connected with own prior fraud, equity will deny him relief, 117 C 289
——if contract has been entered into through fraud or for fraudulent purpose, equity will not, at suit of fraudulent party, set it aside, 117 C 289
——only equitable remedies obtainable are purely defensive, 117 C 289
——as where debtor conveys property to defraud creditors and afterward seeks to set aside transfer, door of equity is shut, 117 C 289
——application of clean hands maxim does not depend on averment in pleadings; should be invoked by court, 117 C 289
court of equity will deny relief to one whose claim arises out of own fraud, 118 C 46
equity will refuse aid to creditor seeking to set aside his own transfer made for purpose of defrauding creditors, 118 C 46
plaintiff bank did not act inequitably in selling stock held as collateral for loan so as to preclude it from resorting to equity in foreclosing mortgage given as additional collateral, 122 C 419
maxim that he who comes into equity must come with clean hands only applied to particular transaction under consideration, 122 C 556
——court will not go outside case to examine conduct of complainant or question his general character for fair dealing, 122 C 556
fact that decedent fraudulently conveyed property will not prevent administrator from recovering it where there was no intent to vest interest in grantee, 122 C 562
——fact that decedent would not come into court with clean hands does not bar administrator's rights, 122 C 562
——clean hands doctrine should not be invoked to bring about injustice, 122 C 570
before complainant can have standing in equity he must show not only that he has meritorious cause but that he has come into court with clean hands, 124 C 320
"clean hands" doctrine only applies to particular transaction under consideration; court will not go outside case to examine conduct of complainant in other matters or question his general character, 125 C 66
——wrong must be done defendant himself and must be in regard to matter in litigation, 125 C 66
——principle when it applies does not give or confirm title but exhausts itself in preventing party from asserting title when he must rely on illegal or inequitable transaction, 125 C 66
——so doctrine not available to plaintiff seeking reconveyance from brother as to illegality of transaction wherein brother formerly conveyed property to him if his (plaintiff's) conveyance to brother was valid, 125 C 66
will not afford its aid to one who by his conduct or neglect has put other party in situation in which it would be inequitable to place him, 125 C 231
if plaintiff requires any aid from an illegal transaction to establish his demand, he cannot recover it, 128 C 195
plaintiff seeking injunction under Fair Trade Act did not come into court with unclean hands because it refused to sell to defendant who cut prices, 128 C 597

§ 3. Jurisdiction and Powers

§ 4. ——In General

equity relieves against accidents, 1 R 310
has power to open foreclosure, 1 R 310
equity will interpose between coexecutors only when absolutely necessary for justice, 1 R 473
does not interfere in settlement of insolvent estate, 2 R 512
proper court to decree specific distribution under will, 3 C 170
will hold case for relief after once acquiring jurisdiction for a discovery, when, 3 C 171
general rule of merger, 6 C 389
equity will prevent merger to preserve beneficial interest, 6 C 389, 8 C 453, 29 C 135

——so too unless the estates were coextensive and commensurate, 8 C 453
equity does not interfere where estate is in process of settlement in Probate Court, 7 C 318
will not take cognizance of case if Probate Court can do full justice, 8 C 280, 9 C 196
equity will relieve to carry out intent of assignment, 9 C 8
equity cannot inquire into accounts cognizable only in Probate Court, 10 C 125
peculiar province of, to prevent commission of injustice, 11 C 56
——enjoining waste by insolvent on his lands attached, pending suit, 11 C 58
will prevent circuity of action and ruinous litigation, 11 C 122
will sequester debt for creditors, only for special cause, 11 C 172
has no power to anticipate result of foreign attachment, 11 C 172
will protect remainderman's interest in chattels, 13 C 46, 60 C 541
——will compel life tenant to give security, when, 13 C 46, 8 C 362
equity may establish title though no cross-bill be filed, 16 C 20
will compel directors to call in instalments to pay debts, 16 C 601
liabilities of surety are not to be extended in equity beyond legal limit, 17 C 127
equity protects interests of unincorporated charity in a devise, 17 C 187
equity carries out intent of bond extinguished by marriage of parties, 17 C 208
protects bona fide vendee of legal title without notice against equitable claims, 17 C 602
power to grant new trial *held* confirmed by statute, 19 C 88
for more than a century jurisdiction in matters of equity was retained and exercised by General Assembly, 23 C 430
statutes limiting equity jurisdiction, not merely declaratory, 23 C 431
has no power to make or ameliorate contracts, 26 C 19
will sustain direct gift from husband to wife, 26 C 232
——aliter, if to prejudice of creditors, 26 C 232
stockholder may maintain suit in equity against directors for mismanagement or fraud, 26 C 462
bill lies for wrongfully putting undelivered deed on record, 27 C 314
whether state courts have jurisdiction with United States courts in admiralty, quaere, 27 C 362
new trial at law granted for what reasons only, 31 C 349
——concurrent jurisdiction with courts of law; equity will not interfere in suit long pending at law, 31 C 344
equity will allow creditor to maintain bill for disclosure and account, if necessary, 32 C 238
bill in equity lies for legacy of specific stock, 32 C 451
equitable title in wife; fraudulent assignment by husband; equity will relieve, 33 C 362
will relieve minority of corporation dissenting from ultra vires use of funds, 33 C 455
undisputed equity jurisdiction first invoked is not ousted by later legal proceedings in court of competent jurisdiction, 40 C 452
stockholders may enforce payment of dividend declared, 42 C 24
——may maintain suit in equity to compel directors to declare a dividend, 42 C 27
may foreclose mortgage on property part of which lies in another State, 45 C 223
may refuse to interfere with corporation de unauthorized contract fully executed, 47 C 161
——though on seasonable application by stockholders it might have restrained same, 47 C 161
under Practice Act court can render in same suit either a legal or equitable judgment, as case may require, 49 C 443
courts of equity rarely have jurisdiction over executors or administrators, 49 C 588
——as the remedies available in Probate Court are generally ample, 49 C 588
when court will appropriate surplus of trust fund in behalf of creditors, 50 C 495
equity courts have had a long established jurisdiction de boundaries; is not dependent merely on statute, 52 C 32
equity will take cognizance of a trust, 52 C 108
whether court of equity can establish boundaries in respect to easement in seashore, quaere, 52 C 429
——court has power incidentally to ascertain boundaries in redressing or preventing wrongs, 52 C 430
Superior Court on an appeal from Probate Court can exercise no equity powers that Probate Court could not, 53 C 35, 62 C 223
Practice Act does not enlarge equity powers, 53 C 35
a court of chancery has authority to protect remainder interests, 53 C 172
——independent of statute which empowers Probate Court to require security, 53 C 171
courts cannot be ousted of jurisdiction either in law or equity by an agreement to submit to arbitration, 54 C 487
equity will protect taxpayers and citizens against exercise of illegal power by common council, 58 C 457

——or of legal power exercised in illegal or informal manner, 58 C 457
——but will rarely interfere with discretionary powers, 58 C 457, 60 C 319
——except for fraud, corruption, abuse of power, violation of law, etc., 58 C 457
——will not aid taxpayer to prevent city from paying its just debts, 60 C 529
jurisdiction once obtained will be *held* in order to afford complete justice, 60 C 190
——spirit of Practice Act enlarges rather than restricts this jurisdiction, 60 C 191
equity will if necessary protect an estate in remainder in personal property dependent on a life estate, 60 C 541
——protection afforded is to require adequate security from the life tenant, 60 C 542
——this protection is now afforded by statute, 60 C 542
Superior Court ordinarily has no equity jurisdiction over trustee for life tenant to protect remainderman of personalty, 60 C 542
facts *held* to justify a court of equity in interfering with the internal and domestic affairs of railroad company, 60 C 573
——to prevent pooling of stock in voting trust, 60 C 573
equity will aid beneficiaries of trust, where trustee fails to exercise an honest discretion imposed upon him, 63 C 62
permits rights of heir apparent to be conveyed, 64 C 153, 66 C 498
when equity may take jurisdiction where money is given for express purpose and neither used nor returned, 68 C 201
jurisdiction to wind up insolvent corporation, 73 C 590
rights of members in fraternal insurance companies are rights which equity can protect, 81 C 205
courts have both legal and equitable jurisdiction unless contrary appears, 81 C 400
power of equity to control wife's right in body of deceased husband, 81 C 598
to secure cancellation of injunction bond, must show no breach of condition; must show no damages due to injunction, 81 C 715
bond not canceled if real purpose is to prevent resort by obligees to courts of another State, 81 C 716
court can of own motion dismiss suit for equitable relief where parties contracted in fraud of public, 83 C 430
equity acts against usurping officers of corporation; does not try title of office unless necessary as incident, 87 C 656
equity does not ordinarily dissolve corporation but there are exceptions, 87 C 656
when courts of equity will give effect to oral agreement concerning sale of land, 91 C 651
equity may estop a defendant from gaining an unconscionable advantage due to failure to put an agreement into writing under Statute of Frauds, 92 C 416
unfairness in dealing between director and corporation corrected by equity, 94 C 384
corporation officer, buying its stock with corporation funds, holds it in trust, 94 C 597
when court may order sale of land conveyed in trust for a charity, 99 C 30
equitable action against trustee's estate *held* not barred by nonpresentation of claim in Probate Court, 104 C 171
protection of trade secret, 104 C 472
power of equity to relieve against mere neglect, not gross or wilful, to give notice for renewal of lease within time prescribed, 107 C 459
equity will not interfere with proper management of corporate affairs at suit of minority stockholders, 108 C 567
minority stockholders may get equitable protection against payments made under voidable contract or under void vote of directors, 108 C 567
right of grantee in deed which misdescribes two boundaries of land but where land can be identified by extraneous evidence, 110 C 374
——right exists against subsequent grantee who took with notice and gave no consideration, 110 C 374
right to decree in equity granting maintenance to abandoned wife generally recognized, 111 C 124
agreement or facts from which controlling equity arises may be proved by parol in bar of action on warranty, 111 C 575
trustee not confined to very letter of trust provisions; may adopt measures and do acts which are implied; this discretion is subject to control of court of equity, 116 C 320
——and in emergency court of equity may even authorize trustee to depart from terms of instrument to preserve trust and protect beneficiaries, 116 C 320
importannt power of court of equity to raise implications growing out of state of trust property, purposes to be accomplished and mode adapted to that end, without violence to or forced construction of instrument, 116 C 320
courts of equity possess broad powers to advise fiduciaries concerning their powers and duties, including construction of instrument, 116 C 588
P made deed of land to bank in difficulties to enable it to make loan; deed held by bank commissioner pending investigation but never recorded until after bank went into receivership and loan never consum-

mated; P *held* entitled to reconveyance, 117 C 58

under what conditions equity will hold building restrictions in development no longer enforceable, 117 C 176

no such hardship or unconscionable advantage shown by finding in mortgagee's taking possession and collecting rents that equity ought to intervene, 117 C 228

at common law mutual debts were separately enforced, but to prevent circuity of action equity established practice of set-off, 117 C 276

——authority now given by statute but gives no greater range than chancery permits, 117 C 276

equity has jurisdiction to cancel insurance policy where, unless such action is taken, company will be deprived of its legal defenses, 117 C 437

——not so if plaintiff must go into foreign jurisdiction to avail himself of it, 117 C 445

——receiver permitted to file cross-complaint against claimant from another jurisdiction, 117 C 445

though divorce with its incident of alimony is creature of statute, relief given is essentially equitable in its nature, 122 C 155

——peculiarly true here where decree of alimony in earliest form consisted of assignment of specific property, 122 C 161

——and fact that both equitable and legal rights have come to be administered by single court does not change nature of decree, 122 C 155

action brought upon decree in equity may be brought in court of equity, and this is not prevented by fact that action may lie at law on decree in equity simply for payment of money, 122 C 155

——it was therefore proper for plaintiff to invoke equitable jurisdiction of Connecticut to enforce New York decree for alimony, 122 C 156

——power of court to enforce decree by proceedings in contempt is inherent in authority of court to compel obedience to its orders and is equally applicable to equitable proceeding brought here to enforce decree of alimony rendered in another State, 122 C 156

our courts have equitable jurisdiction to enforce decree for alimony by courts of another State, 125 C 84

foreclosure is peculiarly an equitable action and court may entertain all questions necessary to do complete justice, 125 C 227

court of equity has jurisdiction to determine suit to enjoin removal of municipal officer, 128 C 296

§ 5. ——Adequate Remedy at Law; Irreparable Injury

will not enjoin levy of alias execution, though original be fully satisfied, K 187

——remedy for same is audita querela, K 187

will decree payment of debt where security is adjudged void at law, 1 R 94

will relieve against accidents and title defective at law, 1 R 105

has no jurisdiction, if remedy at law be adequate, 1 R 207, 318, 364, 467, 500, 2 R 35, 1 C 312, 9 C 179, 559, 11 C 172, 17 C 370, 23 C 631

heirs of co-obligor are liable in equity, if survivor be bankrupt, 1 R 268

will relieve where legal remedy is barred by inevitable accident, 1 R 299

bill to confirm title; remedy by ejectment *held* adequate, 2 R 343

adequate legal remedy; contract; tender, 1 D 173

legal remedy against surety is no bar to bill against principal, 3 C 139

where legal remedy is prospective merely equity assumes jurisdiction, 4 C 179

failure of title is no ground for relief against security given for purchase money, 5 C 531

bill by legatees against grantees of insolvent executor and trustee *held* maintainable, 7 C 210

objection to jurisdiction on ground of adequate legal remedy must be made early, 10 C 276

legal remedy must be clear and complete to oust court of equity, 11 C 121, 21 C 498, 31 C 237

has no jurisdiction if money alone is sought and common-law proof procurable, 15 C 326

——except in case of fraud, accident, or mistake, 15 C 326

legal remedy is adequate for invasion of legal rights of trustee, 21 C 159

has jurisdiction over settlement of firm accounts if adjustment cannot be complete at law; however few the partners, 24 C 284

will not quiet the possession of one whose equitable title has become a legal one, 26 C 239

——nor settle disputed boundaries between adjoining proprietors, 26 C 241

decree granting relief on facts showing legal remedy, *held* erroneous, not void, 30 C 435

wrongful disposal of securities in hands of creditor; remedy at law adequate, 31 C 341

equitable title in wife; fraudulent assignment by husband; legal remedy *held* inadequate, 33 C 362

bill to compel trustee to pay over accruing rents to creditors is not sustainable, 36 C 22

——foreign attachment being adequate remedy, 36 C 23
injunction against setting up a waived defense; legal remedy *held* adequate, 37 C 249
will not decree return of bonds, etc., held by bank as bailee, 39 C 88
——unless special averments de need of bonds or their peculiar value, 39 C 87
being compelled to divide legal remedy into two causes of action is no ground of resort to equity, 39 C 88
injunction issues against collection of taxes only for imperative reasons, 39 C 406
ultimate legal relief immaterial where jurisdiction is taken to enjoin use of judgment, 40 C 451
if legal remedy be obvious court may voluntarily dismiss bill, 40 C 484
having once assumed jurisdiction may grant relief though legal remedy be adequate, 41 C 277
injunction of collection of judgment; writ of error inadequate as not operating as supersedeas, 44 C 193
nonnegotiable note obtained by fraud decreed to be canceled, 45 C 541
——since by delay holder might secure improper advantages, 45 C 541
equitable relief not defeated after hearing on merits, by then showing that legal remedy is adequate, 46 C 105
legal remedy is not adequate if one be compelled to go into foreign jurisdiction to secure his rights, 46 C 601
mandamus lies to compel tax collector to collect a tax, 48 C 158
"adequate remedy at law" means a remedy vested in plaintiff to which he may at all times resort fully and freely, 54 C 249, 56 C 83
legal remedy *held* inadequate to protect owner of house fronting public park from encroachments of neighbor, 54 C 249
——may restrain neighbor from inclosing part of park, 54 C 247
defined, 56 C 83
right to remove by force is not such adequate remedy as to bar equitable relief, 56 C 395
right to recover value of stock illegally attached in suit at law is not such adequate remedy as to prevent an injunction against the levy, 57 C 454
what remedy is sufficient to exclude equity jurisdiction; it must be complete and beneficial, 58 C 21
a suit for trespass *held* to be an adequate remedy to settle title, and a bill to remove cloud will not lie while such suit is pending, 59 C 498
a court of equity will refuse to settle doubtful or try legal titles, except in exceptional cases where there is no other mode of redress, 59 C 507
finding of trial court that damages are no compensation is final, 67 C 497
for tortious erection of building on land of another, latter has an adequate remedy at law, 72 C 196
may grant relief against threatened injury, especially where delay prejudices plaintiff's rights, 80 C 707
equity will not cancel a bond if there is a defense at law to a legal demand based thereon, 81 C 716
——plaintiff must allege and prove irreparable injury, 81 C 721
reconveyance of property given away by husband so that wife becomes a charge on town refused; adequate remedy at law, 84 C 678
equity will not try title; will not take property from one and give it to another, 85 C 159
——it will restrain, however, until law decides, 85 C 159
equity acts only when complainant's title is not in dispute or has been long enjoyed and he is in actual possession; otherwise parties must go to law, 85 C 159
nature of injury to land rather than amount, determines whether injunction will issue, 90 C 114
——right to have damages assessed for public use of lands as adequate remedy at law, 90 C 183
telephone line in highway not basis for finding of irreparable damage to adjoining owners, 90 C 183
legal remedy must be complete and adequate to preclude resorting to equity, 93 C 634
will not ordinarily try question of title to realty; will leave parties to settle their doubful rights first at law, 98 C 222
other adequate remedy defined, 103 C 607, 104 C 548
plaintiff need not allege that he has no adequate remedy at law, 105 C 80
general allegations of irreparable injury insufficient without showing facts, 106 C 475
adequate remedy is one open to plaintiff at all times at his own option, 106 C 475
——right to apply to authority, as zoning commission, for relief not adequate as regards person suffering special damages from nuisance, 106 C 483
special damages are those peculiar to circumstances and condition of injured party and which law does not necessarily imply, 106 C 475
cancellation of insurance policy not granted after death of beneficiary when same facts would be defense at law, 107 C 117
element of irreparable injury must appear in complaint for equitable relief to show inadequacy of legal remedy, 107 C 117

opportunity to plead invalidity of void judgment not adequate remedy at law depriving debtor of right to injunctive relief, 108 C 13

mere allegation of irreparable injury without facts to support it, disregarded, 117 C 260

jurisdiction in equity once acquired is retained for purpose of giving full relief concerning subject-matter, 117 C 445

——remedy at law to exclude equity must be as complete and beneficial as relief in equity, 117 C 445

appeal to court from revocation of optometrist's license, available only after license has been revoked, may not constitute adequate remedy at law, 119 C 667

even where legal right is invaded, equity will grant such relief as is appropriate and necessary, if damages are wholly inadequate to do justice between the parties, 121 C 552

reason for resort to equity in action by wife for support is because relief at law is inadequate, or to prevent multiplicity of suits, 124 C 547

whether injury is irreparable may depend on nature of right rather than extent of damage, 128 C 604

only requirement for maintenance of creditor's bill is that plaintiff does not have adequate remedy at law, 129 C 213

——fact that creditor holds mortgage which it might have foreclosed is not sufficient, 129 C 213

——sufficient justification for resorting to creditor's bill exists where amount which might be realized at law would fall short of claim, 129 C 213

§ 6. Relief Against Legal Proceedings

bill for specific performance of contract to indemnify against execution, is not a bill for relief against the judgment, K 400

grants relief where one has obtained judgment for money legally belonging to another, 1 R 281

may open decree of foreclosure, 1 R 310

——where redemption is prevented by mistake or accident, 1 R 469

will enjoin against vexatious and unjust use of execution, 2 R 111

will not restrain action for fraud in obtaining decree, if same be reversed for fraud, 3 D 508

will restrain use of unfair advantage improperly obtained at law, 13 C 144

reasons *held* insufficient for opening decree to revise finding, 17 C 382

will grant new trial and enjoin enforcement of judgment, when, 19 C 88

will enjoin proceedings at law, when, 19 C 435

will not stay legal proceedings unless party is otherwise remediless, 23 C 623

no jurisdiction to set aside distribution of estate, 24 C 246

will restrain enforcement of judgment obtained in violation of agreement, 28 C 555

——though there be no threat to enforce it; if party refuse to discharge it without a consideration, 28 C 555

will open foreclosure and extend time to redeem, when, 28 C 561

one holding equitable discharge of all debts may enjoin suits at law, 30 C 50

necessity of bringing, or of being liable to defend, many suits depending on single question alone, gives no claim to interference of equity, 31 C 239

neglect to appear on trial of scire facias *held* negligent mistake, 31 C 348

grants new trial in action at law for what reasons only, 31 C 349

will not aid debtor to plead insolvency discharge, unavailable at law, 40 C 89

judgment fraudulently obtained for sum greater than due; collection of fraudulent excess only, enjoined, 42 C 354

——such fraud is no ground for refusing plaintiff his lawful debt, 42 C 354

petition to enjoin collection of judgment; legal remedy inadequate, unless writ of error would operate as supersedeas, 44 C 193

injunction not granted to stay proceedings in criminal matters, 44 C 422

will stay proceedings at law, when, 46 C 76

——injunction against enforcement here of foreign judgment, 46 C 76

petition will be granted where legal advantage gained operates unjustly, 46 C 597

——where gained by fraud, accident, or mistake, 46 C 597

——judgment obtained by administrator in foreign jurisdiction which would have been fraud in his intestate to have secured, 46 C 600

——though administrator was free from any fraudulent intent, 46 C 600

relief from judgment obtained without notice should be seasonably sought, 46 C 604

——judgment may be opened and case returned for a retrial, 46 C 606

mistake as to term of court in copy of writ left with defendant, 48 C 30

——defendant, if purposely failing to appear, knowing all the facts, can have no relief, 48 C 30

cross justice suits; vexatious use of legal process; enforcement of inequitable judgment enjoined, 49 C 447

injunction lies to prevent railroad taking possession of land condemned until payment is made, 54 C 297

injunction does not lie to prevent enforcement of judgment where process is legally served, though defendant had no actual notice, 55 C 182

injunction lies to prevent sale of stock illegally attached, 57 C 460

defendant settling suit before return day is entitled to injunction restraining enforcement of judgment on default, 58 C 318

relief will be granted against award of arbitrators when, 64 C 516

power to prevent gaining of fraudulent advantage by legal proceedings, 68 C 472

power of equity to set judgment aside and grant new trial; where relief is to be sought; restraining action on valid judgment on equitable ground distinguished, 71 C 427

mere expectation of a future agreement created in party entitling her to enjoin foreclosure of mortgage, 73 C 454

power of equity to vacate judgments; parties; divorce, 73 C 498

——to set aside judgment of continuance and restore case to docket; negligence or mistake of counsel, 77 C 19

——to grant new trial; mistake of administrator as to claim on estate, 73 C 399

suit by administrator to set aside judgment affecting land of intestate, 75 C 661

Superior Court in any county can grant relief, 76 C 327

when failure to make possible defense or counterclaim may be basis for relief, 76 C 328, 80 C 642

advice of counsel as excusing failure to make defense, 76 C 328

that foreigner upon whom, as secretary of an association, service was made, misunderstood nature of service; acts of counsel as contributing thereto; pleading these facts, and existence of good defense, 80 C 642

where action brought in Common Pleas Court against justice judgment, relief should be injunction against enforcement, not new trial, 80 C 642

relief where execution is sought on a judgment already satisfied on scire facias, 82 C 517

relief where will procured from incompetent testator and probated, all by means of fraud, 91 C 520

equity does not relieve against judgment at law except for fraud or accident causing injury, 92 C 144

equity can prevent the enforcement of a judgment where defense was prevented by accident, fraud, or improper conduct, 93 C 161

where a tenant equitably entitled to renewal of his lease is sued in summary process, equity will intervene, 93 C 638

judgment in summary process for nonpayment of rent no bar to suit for relief against the forfeiture and enforcement of lease, where rent was lost in mails, 96 C 644

collection of judgment obtained by unlicensed automobile operator *held* not to be enjoined in equity; not contrary to public policy, 99 C 530

equity will not set aside judgment where moving party has been negligent as to it, or as regards mistake in his rights, 100 C 180

when equity will relieve against judgment, 105 C 715

equity may reopen decree resulting from fraud, accident or mistake, 106 C 92

——what mistakes justify opening, 106 C 94

mere forgetfulness or mistake based on gross negligence not sufficient ground for equitable relief, 106 C 436

——disproportionate hardship to mortgagor considered where mortgagee claims mistake in defense of foreclosure, 106 C 436

injunction will lie to restrain proceedings for collection of a judgment void for invalid service of process, 108 C 13

power of court of equity to relieve against judgments, 117 C 568

——fraud, collusion, accident, mistake, surprise and ignorance of the defense, may justify equitable interference where negligence of party is not producing cause, 117 C 569

——must also be shown that meritorious defense has been lost thereby, that execution of judgment would be against equity, and that there is no adequate remedy, 117 C 569

——power exists in equity to interfere with decrees of Probate Court, 117 C 569

complaint *held* to sufficiently allege that will was procured by defendants by means of such fraud and undue influence as would have constituted good defense against its admission, 117 C 565

——and under allegation, facts might have been proven which would excuse failure of plaintiffs to defend against admission of will when it was offered for probate, on ground of ignorance of the defense, 117 C 565

——for this cause of action Probate Court has no adequate remedy because it has no general equitable powers and no right to grant new trials, 117 C 565

may grant relief from operation of judgment when to enforce it is against conscience and party has had no opportunity to make defense or was prevented by accident or fraud of other party, 118 C 226

——but not where party's own mistake or negligence was cause, 118 C 226

——and present case for injunction against enforcement of foreclosure judgment *held* not within equitable rule, 118 C 226

——plaintiff had notice of law day, did not seek to reopen judgment, time was extended by mortgagor, etc., 118 C 226

denial of jury trial by justice of the peace in summary process action ground of error but would not destroy jurisdiction and make judgment void, 121 C 703
——judgment not open to collateral attack on that ground, 121 C 703
equity will not relieve against operation of judgments rendered through negligence of party or attorney, 129 C 38
——that attorney was grossly or inexcusably negligent, nil sig., 129 C 39
allegations that plaintiff was prevented by fraudulent representations from presenting her case in Probate Court if proved were sufficient to justify setting aside adoption proceedings, 129 C 239

§ 7. Relief Against Forfeitures

equity will relieve against a forfeiture, 2 C 301
——will not decree discovery if it subjects party to forfeiture, 5 C 183, 6 C 363, 8 C 533
relieves against breaches of conditions, subsequent or precedent, 7 C 45
will enforce barred legal rights, when; fraudulent concealment, 19 C 433
equity never aids to enforce a forfeiture, 31 C 478, 43 C 561
party generally allowed to redeem property mortgaged, though in default, 38 C 436
will not aid in enforcing penalty or forfeiture, 43 C 561
quitclaim of mortgaged property to mortgagee who agreed to reconvey on payment within certain time, 50 C 269
——*held* equity would not relieve forfeiture after expiration of time limit, 50 C 269
——though tender was made, 50 C 269
——the transaction was not a new mortgage, 50 C 269
where foreclosure has become absolute excess of value is no ground for equitable relief in behalf of one who had due notice but failed to act, 50 C 369
any agreement for a limitation or extinguishment of a right of redemption does not destroy that right, 59 C 177
a joint devise with survivorship, *held* not to lapse on failure of one joint tenant to take, 59 C 293
equity abhors forfeitures; where law and equity conflict, latter prevails, 78 C 466, 87 C 293
equity can relieve against forfeiture on breach of condition subsequent, 84 C 512
equity will not allow one to enrich himself unjustly, through innocent mistake of law or fact entertained by the loser or both, 87 C 293
where mistake mutual and material, equity will protect against forfeiture, 87 C 293
mere enforcement of a forfeiture at law is not a sufficient basis, 92 C 149
relief against forfeitures an established branch of equity jurisdiction, 96 C 644
——where forfeiture was for nonpayment, decree should require payment with interest, 96 C 660
equity may relieve where mortgagor fails to pay instalment or interest on time, and mortgagee exercises option to accelerate due date of debt, 97 C 353
——in such case mortgagor not bound to show continued ability and willingness to pay, 97 C 353
power of equity to relieve against failure of lessee to give notice of renewal at time provided in lease, 97 C 619
forfeitures are not favored, 98 C 155
equity may relieve where mortgagor fails to pay instalment or interest on time, and mortgagee exercises option to accelerate due date of debt, 106 C 436
relief against forfeiture by failure to give detailed statement of embezzlement to insurance company due to embezzlers altering books, 108 C 714
to enforce a reverter provision in a deed is not to impose a forfeiture, 109 C 529
where agreement secured is simply one for payment of money, power of court of equity will relieve party against forfeitures and penalties not occasioned by his wilful neglect, 116 C 666
——one having legal right shall not be permitted to avail himself of it for purpose of injustice, 116 C 666
——failure of mortgagee to receive interest where mortgagor mailed check to former's old address but he had moved, 116 C 666

§ 8. Laches

will not interpose to relieve against negligence of petitioner, 1 R 309
laches; what delay bars relief, 8 C 161
lapse of time will bar suits in equity by analogy to Statute of Limitations, 19 C 434, 22 C 572, 33 C 489
no laches where property owner consistently objected to fountain erected by company on basis of vague contract; company gained nothing by making expenditure, 22 C 608
right to object to oath taken may be lost by, 33 C 153
culpable negligence will estop as well as active misconduct, 39 C 20
circumstances as to diversion of water and delay of three years *held* not to constitute, 41 C 94
mere neglect to sue for five months *held* to create no estoppel, 48 C 257
defendant may forfeit his right to a hearing by negligence, but not ordinarily by inadvertence or misfortune, 51 C 392

delay of two years by town before bringing suit for correction of bonds *held* not to be, under circumstances, 52 C 493
where maker of note continued solvent one and one-half years, then became insolvent, *held* holder not guilty of laches for not attempting to collect, 53 C 457
bond to bank guaranteeing all "drafts, overdrafts and such indebtedness" and waiving diligence, demand and notice, 55 C 212
——failure to sue makers of discounted paper, although at the time they had unincumbered property sufficient to pay notes, *held* not laches, 55 C 212
——and taking small security from maker of note when said maker had large unincumbered property, not laches, 55 C 212
trust deed for creditors; delay of nonassenting creditor to sue for ten years, *held* under the circumstances, not to be laches, 55 C 574
——knowledge of creditor that trust deed is void is not to be imputed, 55 C 574
in equity, is largely governed by circumstances, 55 C 574
not to be imputed to one who has brought action at law within the statutory time, 55 C 578
——nor in equity proceedings subsequently brought to satisfy his judgment, 55 C 578
is no defense to a recovery of money paid by mistake of law or fact, 59 C 328
——if no harm is done to defendant, 59 C 328
——especially where party making payment acts in a fiduciary capacity, 59 C 330
facts *held* to show no laches on part of grantor in suit for reformation of deed, 60 C 192
right of re-entry not insisted on for forty-five years after breach, *held* lost by, 62 C 388
laches defined, 65 C 336, 76 C 334
immediate action on discovery of wrong is sufficient, 65 C 336
so delay beyond time when plaintiff in specific performance was entitled to conveyance under his contract, 66 C 7
it is not laches to fail to examine into representations later claimed to be fraudulent, 66 C 596
delay making issuance of injunction unduly severe as bar to action, 70 C 720
delay in asserting claim as evidence that it never existed, 72 C 481
delay of two weeks after notice of nuisance before seeking injunction is not, 76 C 295
fraud of party claiming; failure to act where there was uncertainty as to legal rights, 76 C 335
natural mistake in first suing wrong party is not, 76 C 465
life tenant not chargeable with laches in not asserting right to possession until entitled to assert it, 76 C 586
there must be prejudice to the other party, 79 C 38
period of Statute of Limitations not followed, when, 79 C 644
no laches where one seeks relief against establishment of building line ten years before as soon as facts are known by him, 81 C 305
nor where cause of action is concealed; Statute of Limitations applies only by analogy, 81 C 433
none in asking to correct March judgment in following June, 81 C 563
delay of three years before State brought mandamus against street railway *held* not laches, 81 C 655
until it becomes apparent that town is about to infringe on property rights the owner is not guilty of laches, 84 C 647
one is not bound to anticipate disregard of valid protest, 84 C 653
none where there is no breach of duty unless delay inexcusable or prejudiced other party, 84 C 653
after hearing of mistake, failure to file a cross-complaint for reformation is not, as a matter of law, laches, 85 C 84
unsuccessful attempt to raise question of laches by demurrer does not prevent raising it on trial, 85 C 84
one who intentionally fails to record a mortgage for two years has no appeal to equity, 85 C 694
laches arises only when there has been such a delay that it will prejudice other party, 93 C 559
delay of two or three years to bring suit on a probate bond is not in itself laches, 93 C 559
if a legal claim is established against an estate after distribution, only laches will prevent judgment compelling distributees to refund, 93 C 559
exists where delay is so long as naturally to prejudice rights, 94 C 597
charge of laches not obviated by institution of suit not diligently prosecuted, 96 C 143
on finding as made, laches *held* not even an arguable point, 97 C 278
failure of insured to read his policy not laches where he relied on agent to issue valid policy, 97 C 337
delay of two and one-half years by city in bringing action to recover money paid by mistake *held* not laches, where no rights had intervened, 98 C 481
conduct of possible donees under will, *held* that they waived or lost their rights by it, 99 C 655

laches as ground for refusing relief, 100 C 652
where issuance of injunction against factory erected in violation of building restrictions would do disproportionate harm to defendant because plaintiffs have permitted its development through many years without objection, injunction may be refused, 100 C 652
ignorance and stupidity as affecting waiver of rights, 102 C 137
party is bound to make reasonable use of information, 102 C 137
Statute of Limitations applied in equitable actions only by analogy to laches, 102 C 258
in action to recover taxes illegally paid sufficient if action is brought in reasonable time after discovery of illegality, 103 C 258
——unless city has changed position to its injury or equitable rights have intervened, 103 C 258
——that it has spent money and tax-paying public has changed of no consequence, 103 C 264
creditors of estate *held* not guilty of laches in presenting claims, especially in view of mismanagement of estate by executors, 103 C 352
laches *held* sufficient to prevent issuance of injunction against ordinary prerogatives of ownership, 103 C 376
Superior and Probate Courts have concurrent jurisdiction over equitable claim of cestui que trust; action not barred by nonpresentation of claim in Probate Court, 104 C 169
inexcusable delay for sixteen years in pressing claim, *held* laches where evidence meanwhile lost through death of witnesses, 105 C 218
where contract did not obligate buyer to pay balance of purchase price until deed tendered, *held* he was not guilty of laches in failing to do so, 105 C 218
laches is inexcusable delay in asserting right, 105 C 228
——exists where there is such delay as naturally prejudiced party to whom claim is asserted, 105 C 228
failure to claim preliminary injunction not laches, 105 C 464
one who constructs building in violation of restriction, with full knowledge thereof and against warnings, cannot claim laches or that injunction will cause disproportionate loss, 105 C 464
laches of plaintiff in seeking to enforce building restrictions knowing of defendant's expenditures might justify denial of relief, 105 C 475
no laches in failing to take action to set aside voidable transaction whereby administrator acquired interest in land of estate for himself where facts not known till just before action, 105 C 557
repudiation of subscription for invalid stock within six months not laches, 106 C 41
laches as inexcusable delay, 106 C 60
laches in presentation of claims against estate, 106 C 602
prejudice is the essence of laches, 106 C 618
one not guilty of laches who lacks knowledge of facts making action on his part of concern to him, 109 C 23
defaulting purchaser under foreclosure having knowledge of order of resale but not that he was made liable for deficiency *held* not guilty of laches for taking no action, 109 C 23
delay in bringing second suit not laches, when first suit brought against wrong defendant, 109 C 460
no laches, where plaintiff's right to injunctive relief does not arise until defendant's building is completed, 110 C 130
defendant *held* not guilty of laches in repudiating contract to purchase real estate, 111 C 269
when structural changes forbidden by lease were made during lessor's absence *held* no laches, 111 C 422
destruction of plaintiff's right to harvest ice pond by pollution became complete when commissioner of health forbade its use and no laches because suit was not brought till then, 114 C 496
delay or acquiescence in violation of agreement will not defeat injunction against further breaches in absence of prejudice, 115 C 70
plaintiff learned that wife had epilepsy after marriage but not that she had had it before, and continued to live with her; *held* no laches or waiver of right to divorce, 115 C 303
where parties claiming in later distribution do not make claim to property distributed in earlier partial distribution, and did not know of invalidity of remainder then distributed, they are not guilty of laches, 116 C 396
incumbrancer not guilty of laches for failure to claim condemnation award when he had no knowledge of proceedings and payment of award to owner until two months thereafter, 116 C 601
where landlord of bank in failing circumstances acquiesced in transfer of its assets to another bank and received rents from latter, making no objection for eighteen months and until latter bank had gone into receivership, landlord cannot attack transfer as improper, 116 C 617
——basis of doctrine of laches, 116 C 629
so long as it remains possible to carry out original purpose of development, each purchaser of lot has right to protection of restrictions in absence of laches, waiver or abandonment, 117 C 176

laches is not mere delay but delay that works a disadvantage to another, 119 C 612
——so where woman accompanied married man to Reno to get divorce, knowing facts before arriving there, and married him month after divorce, delay of first wife in bringing proceedings to set aside decree did not prejudice former, 119 C 612
by plaintiff, as rendering granting of injunction inequitable, where there would be disproportioniate damage to defendant, 120 C 168
not a defense to action at law in contract, 121 C 289
cotenant's right to demand or make contribution is equitable; where his title is confirmed by acquiescence and lapse of time it is on doctrine of laches, 122 C 410
in divorce action, as long as there is possibility of reconciliation plaintiff should not be charged with laches, 125 C 468
——such charge would be ineffective in absence of showing of disadvantage to defendant, 125 C 468
recovery against absolute guarantor of note not barred by laches of holder in failure to notify him of nonpayment, 126 C 457
laches in usual sense not applicable to mandamus, 129 C 276

§ 9. Pleading and Practice

decree granting execution if money not paid by certain day *held* error, 8 C 458
decree finding facts in report true and dismissing bill *held* sufficient, 23 C 436
facts on which decree is based must appear on record, 23 C 536
chancery practice differs from that of England, 23 C 555
objection to exercise of concurrent jurisdiction taken at hearing *held* too late, 24 C 284, 26 C 479
decree granting relief on facts showing legal remedy, erroneous, not void, 30 C 435
decree that unless sum be paid execution may issue against body *held* erroneous, 32 C 14
——execution can issue only after finding that defendant has not paid, 32 C 14
performance of condition imposed by decree is precedent to taking anything under decree, 33 C 28
——but not subject-matter of a decree against petitioner, 33 C 28
if decree vague and ambiguous the remedy is by application to modify, not by writ of error, 36 C 210
decree amendable by inserting agreed time for redemption where omitted by mistake, 36 C 224
decree enforcing contract not proved, erroneous, 37 C 14
petitioner must have some right or interest, otherwise decree erroneous, 37 C 15
decree in favor of defendant on the ground that plaintiff asking equitable relief had legal remedy, erroneous, Practice Act, § 6, 49 C 447
term "complaint" is as applicable to equity as to law, 60 C 213
changing mere computation never impairs effect of decree, 60 C 336
averments in complaint *held* to be in substance a creditor's bill, 60 C 382
——as such lies only where law and equity courts are distinct, 60 C 383
——but now creditor can have judgment and appropriate equitable aid to obtain payment in the same action, 60 C 383
——allegations of the complaint *held* sufficient for such decree, 60 C 383
decree not affected by improper averments if there are other valid averments sufficient to support it, 60 C 380
form of decree for plaintiff ought not to sacrifice his rights to convenience of defendant, 60 C 384
——method of carrying out rights established by the facts is discretionary, 60 C 384
Practice Act affects mere matters of form in equity, as well as in common-law pleadings, 68 C 372
equitable defenses available on appeal from justice of the peace although not available before him, 69 C 15
new facts arising subsequent to the bringing of the action may be pleaded, 69 C 334, 78 C 344
necessity of prior judgment to get creditor's bill, 72 C 45, 73 C 589, 77 C 214, 78 C 578
creditor's bill to reach interests of cestui que trust where he conspires with trustee to defeat creditors' rights, 72 C 45
creditor's bill generally, 72 C 49, 78 C 591
creditor's bill to reach liabilities of stockholders in corporation after dissolution, where directors refuse to enforce them; concurrent remedy against individual stockholders, 78 C 575
——jury trial as regards status of plaintiff as creditor, 78 C 575
in equity proceedings all persons interested should be made parties, 79 C 653
defendant in an equitable action brought by the State can interpose any defense germane to the matter in issue, 81 C 9
claim may be established and equitable relief sought in one action, 83 C 80
mutual debts created before insolvency can be set off if equality of distribution in insolvency is not thereby destroyed, 88 C 185
action for debt, injunction, and accounting at same time proper, 88 C 682
action to cancel a deed is an equitable one, and for damages a legal one; they should be stated in separate counts, 91 C 214

declaratory decree cannot adjudicate rights affecting unrepresented and unborn parties, 91 C 500

use of creditor's bill in order to reach alimony, 93 C 301

supplemental bill to bring in matters subsequent to bringing action, 96 C 659

——injunction against judgment in summary process rendered after action brought, where suit brought for relief against forfeiture terminating lease, 96 C 659

general prayer for equitable relief entitles plaintiff to order for reconveyance of property, 100 C 689

on appeal, Supreme Court may order necessary party to be entered in suit, 100 C 689

——if his absence is the only objection to granting relief, 100 C 689

creditor's bill not known to our law, 100 C 712

——but action by judgment creditor to set aside conveyance by debtor as fraudulent and for damages for fraud may be so called, 100 C 712

plaintiff need not allege that he has no adequate remedy at law, 105 C 80

general prayer for equitable relief will support any decree consistent with facts alleged and proved if defendant not surprised or prejudiced, 106 C 411

——prayer for absolute injunction will support one on condition, 106 C 411

pleading irreparable injury, 106 C 475, 107 C 117, 117 C 260

in proceedings to make available tax lien if legally released by city, decree cancelling releases is enough without direction to reinstate lien, 106 C 543

when an action is governed by the facts and law existing at time it was brought, 106 C 687

Practice Act has changed forms and nomenclature, but not redress to which one is entitled, 107 C 117

when equitable relief is demanded, considerable latitude should be permitted in presentation of evidence, 114 C 283

in equitable proceeding it is proper to amend complaint to include default in payment of interest after the action was brought, 116 C 671

where demands for equitable relief, better practice is to submit to jury appropriate issues, the court, on their findings, to grant proper relief claimed, 117 C 289

——answers to interrogatories as well as the verdict, appropriate to aid court in rendering judgment, 117 C 289

——interrogatories requested by plaintiff interjecting element of fraudulent conveyance by defendant should have been allowed, 117 C 295

proceeding for appointment of receiver to take possession of assets and for dissolution of corporation, is an action in equity, 117 C 450

cross-complaint by receiver against claimant to recover unpaid stock subscription equivalent to bill of equity ancillary to receivership, 117 C 451

where in equitable proceeding trial by jury is had, general verdict usually will not serve purpose intended, which is to inform court as to facts upon which relief, if any, is to be granted, 121 C 646

——proper course is to submit interrogatories covering only those issues upon which court determines, in its discretion, decision of jury is appropriate and useful, 121 C 646

——if answers are returned and accepted, court determines any other issues necessary to decision of case and gives judgment, 121 C 646

in equitable action tried to the jury it is peculiarly within discretion of court to submit such interrogatories as it deems will be helpful in making of ultimate decision, 122 C 561

in equitable action tried to jury court has discretion to determine what issues shall be submitted to them, deciding other issues itself, 122 C 561

——when general claim for jury is granted, better practice to submit all such issues as they may properly try, 122 C 562

where incidental issues of fact are presented in action essentially equitable, court may determine them without jury, 128 C 307

——where issues would be properly cognizable in action at law either party may have legal issues tried to jury, though equitable relief is asked to give effect to legal rights, 128 C 307

——where controlling issue is based on legal title to real estate and that is contested, equity will ordinarily leave question of title to be determined as issue at law, and it is of right triable by jury, 128 C 307

——so when S claimed ownership of property attached, was made party defendant, and asked decree setting aside attachment, she was entitled to jury trial on issue of title, 128 C 308

ERASURE FROM DOCKET

See Docket § 2

ESCAPE

See Prisons § 2

ESCROW

deed delivered into hands of third person to be held and delivered upon certain conditions needs no memorandum in writing, 2 R 81
judgment by confession on arbitration note delivered as escrow *held* erroneous, 2 R 444
deed in nature of testamentary devise delivered as an escrow with power of revocation; *held* deed took effect from time of first delivery, 4 D 79
release of all demands to be delivered at termination of suit, *held* to be on escrow, 1 C 381
takes effect when, 2 C 305
condition on which instrument is to be delivered is provable by parol, 2 C 306, 5 C 556
——though involving evidence of parol agreement, de interest in land, 2 C 306
bill or note given as escrow must be delivered over pursuant to condition, 4 C 237
definition of, 5 C 92, 559, 10 C 136
inoperative until conditions be performed, even though delivered, 5 C 92
delivery essential to validity of, 5 C 116
an escrow, where deed was deposited with a third person, to be delivered back to grantor in case he should give grantee certain security for a debt within the time limited, otherwise to be delivered to grantee, 5 C 555
whether deed is intended as an escrow is a matter of fact, 14 C 276
co-obligor of bond may hold it as, 34 C 103
bond signed on condition, *held* to be, 34 C 103
deeds carrying into effect contract of purchase, placed in hands of third person to be delivered when purchaser should perform conditions imposed on him, were delivered in escrow, 74 C 114
a delivery in escrow to one's agent is good if he holds it in his individual capacity, 81 C 671
deed left in hands of grantor's attorney pending a sale, not in escrow, 87 C 90
disposition of escrow fund on sale of corporate assets, 101 C 713

ESTATES FOR LIFE

See Life Tenant and Remainderman; Wills § 32

ESTATES OF DECEASED PERSONS

§ 1. In General; Jurisdiction
2. Claims and Debts
3. ——In General; Miscellaneous Cases
4. ——Services Rendered Deceased
5. ——Presentation and Limitation of Claims
6. ——Suits to Enforce Claims; Limitation of Right
7. ——Payment; Priorities
8. Sales
9. Distribution
10. ——In General
11. ——Duties of Distributors
12. ——Particular Classes of Heirs
13. ——Partial Distribution
14. ——By Agreement
15. Rights of Heirs

Note: §§ 9 and 15 include cases arising out of intestate estates or where the principle applies to both testate and intestate estates; for distribution and rights of legatees and devisees under a will, see Wills §§ 58, 66.

See also COMMISSIONERS OF ESTATES; EXECUTORS AND ADMINISTRATORS; PROBATE COURT; LIMITATION OF ACTIONS; TRUSTS; WILLS

§ 1. In General; Jurisdiction

distinction between debts by specialty and simple contract as affecting jurisdiction, 2 C 534, 19 C 248

lex loci rei sitae governs as to assets and debts, 9 C 199

lex domicilii governs in the final distribution, 9 C 199

our law is solicitous that the estate be settled as soon as it conveniently can be, 9 C 228

estate represented insolvent but proving solvent to be treated as solvent by common law, 27 C 263

——remedy where executor with assets refuses to pay, 27 C 270

process against one concealing estate; statute applies only to specific property; not object of statute to collect debts, 28 C 419

bond for deed containing personal covenant only is binding on estate, 38 C 86

creditors of decedent cannot ordinarily claim right to administration if more than ten years had elapsed, 38 C 256

power of General Assembly to grant administration after time stated in statute had elapsed, 38 C 256, 45 C 315

during settlement of estate personalty is taxable in domicil of deceased, 38 C 443

real and personal estate alike a fund for payment of debts, 44 C 575

under statute Probate Court need not expressly find it expedient to settle estate as insolvent, 49 C 423

——its determination is to be found in the orders and decrees to that effect, 49 C 423

judgment of New York court finding testatrix domiciled there though dying within a district of this State, *held* conclusive on all parties to proceedings, 50 C 339

grant of administration must yield to fact that supposed decedent is alive, or left a will, or was domiciled in some other jurisdiction, 50 C 340

whether fact that estate actually solvent is represented insolvent, abates action against, under statute, quaere, 51 C 20

——filing inventory and account by trustee under statute is not sufficient notice, 56 C 442

testator's domicil rather than residence of executor determines jurisdiction, 58 C 233

——duty of Probate Court to keep property in its control until distribution, 58 C 233

unauthorized transfer of property of estate; one receiving with knowledge bound to account, 64 C 25

jurisdiction, where testator seeks to have American property administered by American law and English property by English law, 67 C 9

what law governs succession to personal property, 67 C 9, 27, 76 C 617, 77 C 644

each State determines descent of land within it, 70 C 211

administration not complete until all assets are properly disposed of, 70 C 363, 72 C 555, 77 C 227, 78 C 517

in determining whether or not to grant administration, court should determine whether property is existing and available to estate; to secure collection of note barred by statute, 76 C 378

ought not to grant administration where it will be of no avail, 76 C 381

law of domicil fixes inheritance tax, 77 C 644

administration elsewhere is ancillary, 77 C 653

property is ordinarily transmitted in form it has at intestate's death, 81 C 178

if plaintiff dies after getting judgment, defendant must have an administrator appointed to appeal, 82 C 208

existence of apparent claim on an estate gives jurisdiction to appoint administrator, 83 C 235

settlement of insolvent estate like that of insolvent debtor, 85 C 697

steps to be taken to get back property conveyed in fraud of estate's creditors, 85 C 698

law of Connecticut governs title to real estate here; proof of will in another State of no significance, 86 C 707

Probate Court cannot grant administration on estate of person unheard of for seven years unless State grants this power with provision for proper notice, 88 C 423

under act of 1903 attachment not ipso facto dissolved by death, 88 C 100, 90 C 323

——insolvency of estate is no defense, 88 C 100, 90 C 323

three days' notice in case of administration on estate of one absent twenty-seven years may be reasonable, 88 C 423

insolvency of estate as dissolving attachment, 90 C 323

daughter of deceased not guilty of fraud in failure to attempt to locate half brother unheard of for forty years, 90 C 561

recognition by court of a guardian ad litem previously appointed is equivalent to an appointment in hearing in question, 93 C 590

——former certificate of appointment is admissible, 93 C 590

only Probate Court can adjudicate insolvency, 94 C 526

insolvency of decedent's estate can be proved only by the probate records, 95 C 148
administrator's deed gives no better title than if deceased had made it, 95 C 272
power of State to impose conditions upon succession to property, 96 C 368
fund should be set aside for payment of debts and expenses, 102 C 318
the "family" of the deceased who, by statute, may occupy his dwelling during settlement of estate, 103 C 226
whether real estate should be rented pending settlement of estate depends upon all circumstances, 103 C 226
simple and expeditious way to settle rights in Probate Court rather than in Superior Court commented upon, 103 C 379
insufficiency of assets of wife's estate is prerequisite to statutory liability of her husband for funeral expenses, 104 C 519
State of decedent's domicil controls succession to local real estate and personal estate everywhere, 105 C 192
statute as to presumption of death after seven years' absence considered, 108 C 276
——gives rise to no general presumption, 108 C 276
practice of conducting business of estate through holding corporation disapproved, 108 C 412
identity between estate and holding corporation through which executors conduct business, 108 C 434
cause of action for wrongful death under New York law as property, justifying appointment of administrator here, 108 C 436
succession to personalty governed by law of decedent's domicil, 108 C 611
every estate should be submitted to probate to carry out policy of having title to lands appear of record and for taxation purposes, 109 C 452
statute forbids grant of administration upon estate of deceased person more than ten years after his death, 109 C 452
what law governs succession to real estate in foreign jurisdiction, 110 C 36
estate within jurisdiction of domicil excludes real estate outside State, 110 C 36
——but includes personal property everywhere, 110 C 36
settlement of estates should proceed in regular and orderly way, a proper foundation being laid for each successive step, 110 C 662
property appointed is not part of the estate of donee of power, 111 C 594
family settlements highly favored by courts of equity and will not be disturbed for any ordinary mistake, 114 C 325
payments for long period of time made voluntarily in accordance with family agreement cannot be recovered back, 114 C 325
surviving partner can credit expenses of settling partnership affairs in determining amount due deceased partner's estate, 115 C 341
——expense of defending action for accounting brought by executor within rule, 115 C 341
estates should not be represented insolvent unless they are really so, 115 C 608
Superior Court has no right to take over settlement of an estate, 117 C 572
rights of inheritance of adopted child from collateral kin of adopting parent, 118 C 202
proceeds of life insurance policy payable to named beneficiary not assets of estate of insured, 119 C 574
neither failure of administrator to account for insurance money nor his improper payment of part of estate to himself as distributee could destroy their character as assets of the estate, 120 C 181
doctrine of conversion is applied to give effect to the aspect of property which it may fairly be assumed it had taken in the mind of the deceased, 120 C 393
money received from insurance policies should be administered as part of estate, when paid to one under facility-of-payment clause, 120 C 471
——recipient has no ownership of funds, but is constructive trustee of beneficiary, 120 C 471
any estate may be settled as insolvent if Court of Probate deems it expedient, though it is not found to be actually insolvent, 124 C 216
Probate Court has determination of whether property in hands of ancillary administrator in this State should be remitted to principal administrator or be administered here, 127 C 108
——beyond power of Superior Court to assume primary jurisdiction to render judgments which would bring about administration of property in this State, 127 C 108
estate of deceased person consists of property derived from him which it is duty of executor or administrator to inventory and for which he must account, 129 C 576
——fraudulent deposit in name of estate did not become assets of it, there was no obligation on innocent coexecutor to account and it did not enrich estate, 129 C 576

§ 2. Claims and Debts

§ 3. ——In General; Miscellaneous Cases
disallowance of claim by commissioners is conclusive as to creditor, 1 R 251, 2 R 188
——even though estate turn out to be solvent, 1 R 103
Probate Court has no power to expunge from report of commissioners a claim allowed by them, 2 C 350

debt due from partnership is a "claim" against estate of deceased partner, 21 C 41
effect of taking security after allowance of claim, 30 C 77
——administrator may enjoin suit on such claim, 30 C 78
——discussion as to appropriate remedy, 30 C 78, 79
whether taxes due are debts of deceased, quaere, 30 C 209, 49 C 425
claim founded on tort of deputy may be presented against estate of deceased sheriff, 30 C 351, 33 C 109
rights of resident creditors against estate of nonresident deceased, 32 C 319
action of commissioners disallowing claim affects only insolvent estate, 32 C 550
administrator cannot subject estate by admissions, 36 C 7
——cannot waive due diligence by holder of note, 36 C 8
duty of executor or administrator to insist counterclaim in favor of estate be applied upon claim presented, 37 C 349, 39 C 22
bond or deed containing personal covenant only is binding on estate, 38 C 86
estate of obligor of joint bond is not liable in law or equity, 38 C 317
——exceptions to rule, 38 C 318
indorser of note is not creditor until he takes up note, 40 C 168
counterclaim of estate should be applied on claim presented, 41 C 75
——if both parties consent, counterclaim may be passed over, 41 C 75
——consent may be implied from conduct, 41 C 76
——such a course is no defense to action on counterclaim, 41 C 75
claimants denied in foreign and principal jurisdiction may resort to estate here, 49 C 424
——claims not extinguished because of failure to sue in a foreign State, 49 C 424
whether fact that estate actually solvent is represented insolvent, abates action against, under statute, quaere, 51 C 20
owner of reversion in funds is not a creditor of estate of life tenant, 51 C 20
——administrator of life tenant, not tenant's estate, is liable for the fund, 51 C 20
——estate liable only for that part of fund wrongfully disposed of, 51 C 21
intestate conveyed all his estate to avoid attachment by a particular creditor, with agreement that grantee should pay debts justly due, 52 C 441
——*held* conveyance was void against all creditors who had established their claims, subsequent, as well as existing, 52 C 441
——grantee refusing to pay debts under agreement, the property was liable, 52 C 442
——and also for expenses of administration, 52 C 442
——duty of administrator to inventory and recover property fraudulently conveyed if necessary for payment of debts, 52 C 439
estate of wife alone is liable for her debts contracted upon credit of her estate, 62 C 154
an allowance of claim by commissioners binds Probate Court in application of assets, 62 C 154
liability of estate on guaranty made by deceased, 67 C 147
claim must be based on obligation assumed by, or cast by law upon, deceased, 72 C 167
estate is liable where deceased took deed on his oral promise to hold it in trust and converted it to his own use, 81 C 433
unfounded claim must be opposed, 82 C 500
where one in good faith but through mistake gave a credit in the belief it did not release his claim, he is not estopped to show real facts, 82 C 572
where A was obligated to care for B and gave a note to B in satisfaction thereof, which B gave back upon a promise to keep it safely, B can claim full value of note, 82 C 607
statement of claim takes place of ad damnum clause in appeal from commissioners, 83 C 35
apparent claim in favor of decedent ground for appointment of administrator, 83 C 235
after death of mortgagor whose mortgagee has failed to record his mortgage, his creditors should apply to Probate Court for a distribution, 85 C 694
receiver's demand for a stock assessment can be compromised, 86 C 463
presumption is that advances by wife to husband are gifts; burden of proof, 88 C 114
secured creditor who fails to notify commissioner that he holds security does not thereby elect to proceed against estate only, 88 C 538
——he must apply security first and obtain dividend only on the excess, 88 C 538, 91 C 58
secured creditor can pursue all his remedies at once but can obtain payment only once, 88 C 538
where husband mingles wife's money with his and buys securities, wife should file a claim that part of the securities belong to her, 90 C 231
insolvency dissolves attachment in case of both living and dead insolvents, 90 C 323
what are claims; obligation originating after death is not, 92 C 504
claim stated to be promise of deceased to give claimant $35,000, will support recovery upon promise to leave her such a sum as

would produce a certain income, estimated by him to be $35,000, 96 C 472
——how amount to be awarded on such a claim is to be determined, 96 C 472
where stock was given to B on condition that he pay amount into estate and assume liability, except on certain notes jointly indorsed by him and testator of which estate was to pay one-half, other half of notes to be regarded as ante-mortem claim, 101 C 699
Probate or Superior Court, on appeal, ordinarily has no jurisdiction to pass on validity of claims; but may do so in certain instances as incidental to discharge of powers expressly granted, 103 C 226
Probate Court may enforce payment of claims which have been allowed, by refusing to accept final account, 103 C 226
return of claims does not necessarily have to show whether they are allowed or not but sound practice justifies inserting this, 103 C 226
——statement of allowance not conclusive but furnishes strong evidence of the fact, 103 C 226
——where issue is refusal to approve account because allowed claim has not been paid by administrator, evidence as to its having been paid in life of deceased is immaterial, 103 C 226
claim includes unmatured debt, 111 C 649
——as amount due on instalment mortgage which had been assumed by deceased, 111 C 649
——hence covers liability for deficiency judgment in foreclosure, 111 C 649
where land is devised, it is the duty of the executor to pay debts secured by mortgage given by testator, 113 C 62
——basis of this rule, 113 C 62
——where mortgage is on land when testator purchased it, question is as to his intent, 113 C 62
——general provision for payment of bills *held* to show intent that executor should pay it, 113 C 62
——whether executor of deceased resident of this State should pay debt on land in another State determined by our law, 113 C 62
——effect of Massachusetts statute concerning duty of executor as to devise of lands in that State, 113 C 62
claim against estate and complaint based on its disallowance *held* to support recovery based on deceased's voluntarily incapacitating himself from performing agreement, 113 C 449
claim for price paid for assignment of rights under agreement to divide profits, *held* to justify action to recover amount of profits, 113 C 449
executors and administrators have power to compromise disputed claims without court authority, 116 C 58
——purpose of statute de approval by Probate Court is to protect them from liability for loss, 116 C 58
check given by decedent before death to plaintiff bore words "paid off note" and were placed there at his direction by bookkeeper to whom he said note was paid in full; conclusion that payment discharged note correct, 116 C 728
note secured by mortgage is presentable claim, 123 C 361
one of four sons remained on farm and made improvements on it in mistaken belief that property would become his on death of mother, 123 C 687
——essence of right of recovery that improvements have added to value of property, 123 C 687
——where no evidence offered as to this, only evidence being original cost of improvements, no basis for recovery, 123 C 688
wife *held* entitled to recover from estate of husband for past support, 124 C 543

§ 4. ——Services Rendered Deceased

where services have been rendered in pursuance of an agreement that compensation should be made by will, but no such provision is made, *held* party rendering services has a claim against estate as creditor, 61 C 203
——charge de *held* sufficient, 61 C 203
——evidence that deceased had declared that he would leave claimant his property and that he had an agreement with claimant, *held* admissible, 61 C 201
——as a recognition that the services were rendered, 61 C 201
an oral promise to leave property by will in consideration of companionship and society is within Statute of Frauds, if property consists of real estate in whole or in part, 63 C 538
——fact that promisee has acted upon terms of promise does not relieve, as part performance, 63 C 539
——if promisee has rendered services in reliance on such promise, he may recover the value of such services on quantum meruit, 63 C 543
estate of ward not liable for false representations of conservator as to payment for services, 72 C 167
cannot recover on claim based upon special contract and quantum meruit at same time, 72 C 167
in action for services rendered deceased relative, evidence of request made sixteen years before death and that deceased possessed competence is admissible, 79 C 664

claims for support of near relative must be clearly proved; "providing a home for care and support of A" sufficient statement; claim for services covering twenty years, 80 C 19
mistake in description of signature to note of no consequence, 80 C 414
leaving a legacy combats implied promise to pay for services, 82 C 500
law does not imply promise to pay for services rendered without expectation of pay, 82 C 500
in agreement to pay by will for services recovery may be had against estate not exceeding amount to be left by will, 82 C 648
in oral agreement to convey real and personal property at his death in return for support, no right of action accrues until his death; damages measured by value of services rendered, 83 C 34
clear proof of contract required where servant claims extra compensation, 90 C 611
if son lived with parent and contributed services and money, they are presumed to be gratuitous, 92 C 306
by daughter and heir for services on deceased's promise not to make a will, 96 C 383
——claim is not based on promise, hence failure to state it in claim presented to executor immaterial, 96 C 384
——recovery can be had on quantum meruit, 96 C 383
—right of action *held* not to accrue until death of testator, 96 C 383
contract to perform services for life not within Statute of Frauds, 101 C 54
for services rendered must rest on express or implied contract, 101 C 752
claim for care and services must be based upon mutual understanding or agreement for compensation, 102 C 331
——to be carefully scrutinized when based upon alleged statements by decedent, 102 S 331
in action on claim for services to decedent, statements made by him should be carefully analyzed to see that they were not merely expressions of generous intent, 102 C 331
——promise of decedent to claimants who had left him to leave them his estate if they would return negatives his intent to pay for earlier services, 102 C 331
in action for care and services rendered decedent, evidence of unfriendly relations between him and another brother, inadmissible, 102 C 331
various theories upon which recovery may be had for services rendered to deceased, 106 C 511
basis of recovery where services are performed in reliance upon promise to leave property by will, or to permit heir to inherit under statute of distribution, 107 C 186
requested rendition and acceptance of services between strangers usually indicate intention of payment; nurse *held* entitled to recover for services rendered aged testatrix, 107 C 691
claims for services should be allowed only on clear and satisfactory evidence of agreement that they were to be paid for, 107 C 696
claims for services to be scrutinized with care, 109 C 507
——rule not restricted to services by relatives, 109 C 507
——its reason, 109 C 507
on issue of rendition of services with expectation of payment, unexecuted will in favor of claimant and statements as to paying him and making will admissible, 110 C 217
in suit by employee for services, attorney's draft of will not signed or approved by deceased *held* inadmissible as privileged, 112 C 521
caution as to claims for services made after decease, *held* not contradicted by usual charge as to burden of proof, 112 C 528
where recovery is sought on quantum meruit based on promise to devise land, value of land is not measure of damages, 115 C 208
one who has rendered services under an agreement to receive compensation by devise of land, unenforceable because of Statute of Frauds, may maintain an action for the services rendered, 116 C 108
——measure of damages is reasonable value of service and not that of the property agreed to be conveyed, 116 C 108
intestate promised to devise plaintiff life use of real estate in return for services but will gave her a less amount without explanation; *held* the gift was not intended as satisfaction for services and verdict for plaintiff should have stood, 116 C 108
——provision in will stating that testator was not indebted to any person except third party, considered, 116 C 108
finding supported conclusion that estate was liable to plaintiff; court applied applicable rule of law that such claims should be carefully scrutinized, 120 C 600
proof of value of services rendered decedent, 120 C 600
——that plaintiff kept no accounts does not necessarily preclude her from recovering, 120 C 604
——amount promised to be left by will in compensation is of no weight in determining reasonable value, 120 C 600
——and where there was expert testimony, but court obviously based its judgment on

promise by decedent to leave property to plaintiff, new trial was ordered, 120 C 600

reason for rule requiring clear and satisfactory proof as regards claims for services to a decedent, is to provide check against possible imposition and frauds, 120 C 603

——and principle applies as well to determination of amount claimant is entitled to, 120 C 600

plaintiff claimed decedent promised to leave her by will farm and mortgage in return for services; *held*

——Statute of Limitations did not bar claim for services rendered prior to six years before death because oral agreement prevented right of action accruing before death, 121 C 97

——failure to allege this agreement was not a defense, since action was on quantum meruit, 121 C 97

——amount of recovery is reasonable value of services, not that of property agreed to be conveyed, 121 C 97

——and legacy decedent left plaintiff should not be deducted as there was no proof that testator intended it to be in payment, 121 C 97

claims filed by plaintiff with administrator fairly informed him that former had claim for services rendered deceased and afforded him basis for examining into matter, 124 C 43

in suit for services rendered decedent, where claim filed with administrator apportioned total amount among three items of service, recovery not limited on each item to amount specifically apportioned to it, 124 C 50

verdict for $3000 excessive on evidence, 128 C 405

§ 5. ——Presentation and Limitation of Claims

where unable to ascertain amount before limitation expires, claimant may exhibit and recover later, if administrator has assets, K 37

resort to estate of surety on tax collector's bond, when barred, K 315

a claim for contribution on a joint debt must be presented, K 424

——whether the creditor has or has not demanded payment, K 424

Probate Court may extend time for presentation to eighteen months, 1 R 177

——cannot extend time beyond eighteen months especially after report has been accepted, 16 C 308

presentation prevented by fraud; equity decrees set-off against administrator, 1 R 229

conditional claim against a deceased person is barred unless exhibited within time limited, 2 R 142

right to redeem pledge is lost by failure to exhibit claim, 2 R 143

Statute of Limitations bars debt not exhibited by creditor within time limited by Probate Court, 2 R 189

claim not exhibited in time limited is barred, 2 R 423

——unless creditor discovers uninventoried estate before dividend declared, 2 R 423

creditor discovering new assets of estate may present claim although time limited has expired, 2 D 313

claim accruing after limitation in consequence of insolvency of surviving partner is not barred, 4 D 481

claim accruing after time for presenting has expired is barred, 5 D 285

an existing debt the amount of which cannot be ascertained is not barred if not presented within time limited, 6 C 258

claims against solvent estate should be demanded of executor, 7 C 314

claim, though contingent, should be presented within time limited, 10 C 66

——it is no objection that claim has been exhibited to executor too soon, 10 C 67

limitation for exhibition of claims to be computed from date of order, 11 C 298

——day of date of order to be excluded, 19 C 382

executor or administrator may revoke a former disallowance of claim, 12 C 163

——thus preventing statute from barring claim, 12 C 163

——may be done by one of two administrators, 12 C 164

how creditor of solvent estate should prosecute his claim, 13 C 505

probate records are only an admission that claim was duly presented, 13 C 506

after expiration of time for presentation of claims Probate Court has no authority to allow further time, 16 C 303

presentment of claims to commissioners is not a formal proceeding, 18 C 130, 27 C 353, 46 C 429

——verbal demand for allowance of written claim is sufficient, 18 C 131

in computing time for presenting claims, day of order should be excluded, 19 C 376

what presentment of claim on note is sufficient, 19 C 583

statute de time for presenting claims simply limits preexisting right, 27 C 260

claim of beneficiary for trust funds in hands of executor with notice, need not be presented, 31 C 260

claims against sheriff for deputy's default are presentable, 33 C 115

——barred, if not presented in time limited, 33 C 115

court can extend time limited after its expiration only for cause shown, 34 C 204, 39 C 398
——that commissioners failed to give notice is a sufficient cause, 39 C 400
right to specific performance of contract for sale of real estate not waived by presentation of claim to commissioners, 38 C 413
new appointment of commssioners required on extension of limitation, 39 C 400
indorsee, not indorser, of note not due is the one to present the note, 40 C 168
claims against should be presented in writing to administrator, 44 C 455
——not absolutely essential, but the safer course, 44 C 455
——verbal presentation *held* not sufficient, 44 C 453
claim accruing after limitation expired is not barred if presented within one year after it accrues, 44 C 575
mode of procedure to collect claim accruing after time for presentation, 45 C 604
failure to present in time is no bar to set-off against claim by administrator for debt due estate, 46 C 275
paper containing amount of sums lent and interest computed *held* a sufficient presentation of claim to administrator, 47 C 442
if liability is fixed, claims against may be presented before maturity, under statute, 49 C 273
——presentment before is a presentment at maturity, 49 C 274
——liability to pay subscription to stock; receiver ordered to call in, may present claim before time fixed for payment, 49 C 273
contingent liability of estate for stock subscription call becomes certain when, 50 C 227
suits against are governed by statute rather than general Statute of Limitations, 52 C 141
claim allowed, settlement continued ten years, claim then disallowed; *held* statute applied; claim not barred, 52 C 142
presentation of claim is sufficient if claim can be understood, 54 C 524, 62 C 374
——need not be in such form as to call for any pleadings, 54 C 524
——the single issue is whether claim ought to be allowed, 54 C 524
no form of presentation of claim to executor is necessary where executor has knowledge, as president of company owning claim, 56 C 251
under statute a presentation of claim need not be in writing, 56 C 251
——but knowledge of claim must be brought to executor by some act of claimant in its behalf, 56 C 252
——it is not enough that executor learned of claim through outside sources, 56 C 252
when same person is administrator of both creditor and debtor estates, no form of presentation is necessary, 56 C 252
——and executor can bind estate by an agreement to allow a judgment to be taken, 56 C 255
note of deceased to company held by executor who was president of company regarded as presented, 58 C 90
——that executor as principal legatee intended not to present note, *held* not to affect the question, 58 C 90
under statute, there is no provision for suspension during disability of claimant, 59 C 161
——claimant disappearing two years before death of testator raises no presumption of death during the six months limited, 59 C 160
——though never heard from thereafter, 59 C 160
judgment, under statute, 59 C 547
——where a claim has been so presented and no objection is made, *held* objection waived on appeal, 59 C 550
where right of action accrues and there is no administration, *held* limitation under statute, does not begin to run until an administrator is appointed, 61 C 450
——statute rigidly applied and strictly enforced, 61 C 450
what presentation of claim to commissioners is necessary, 62 C 373
"to cash $1700," *held* a sufficient presentation prior to rule requiring fuller statement, 62 C 406
——prior to rule it was only necessary that claim should be so stated as to be understood, 62 C 407
suits upon rejected claims must be brought promptly, 63 C 307
claim for services must have been presented prior to suit, 63 C 546
presentation of claim is essential and a condition precedent to a recovery against a solvent estate, 63 C 546
——a complaint failing to allege presentation is defective, 63 C 546
——where a complaint failed to allege presentation *held* party might amend, 63 C 550
where fraudulent concealment by principal, cause of action against surety's estate accrues on discovery of breach of bond, 66 C 58
no presentation necessary where express trust exists; husband as statutory trustee for wife, 67 C 443
under specific devise of mortgaged property, debt must be paid from personal assets; no presentation necessary, 68 C 198, 74 C 96, 459, 78 C 481, 79 C 363
whether administrator can waive presentation, quaere, 73 C 399

claim barred after six years though court never made order limiting time for presentation, 75 C 408
what presentation sufficient, 76 C 141, 80 C 19
mere knowledge of claim not enough; payment of interest, 76 C 141
presentation by exhibition of notes, orally calling attention to them, etc., 78 C 310
effect of failure to present, 78 C 481
inventory of land as under mortgage and payment of interest does not import presentation, 78 C 481
debt secured by mortgage is payable from personalty and presentation may not be necessary, 78 C 484
claim for stockholder's liability for unpaid subscription must be presented, 78 C 595
executor's casual knowledge of claim not enough to constitute presentation, 81 C 264
what constitutes presentation, 81 C 264
admission that claim was presented does away with proof, 84 C 202
——not limited to nominal damages if amount of claim presented is not proved, 84 C 202
statute *held* to bar a claim for assessment on stock, which accrued in 1902, when presented to executor, in 1906, 86 C 463
claim accruing after death or time limited for claims must be filed within four months after right of action accrues, 93 C 559
failure to present claim not available as defense unless specially pleaded, 98 C 201
——law not applicable where action is brought and proceedings are taken under survival statutes on death of defendant, 98 C 201
claims in suit at decedent's death need not be presented against his estate, 98 C 208
——where his administrator is substituted as party for defendant, 98 C 211
Superior and Probate Courts have concurrent jurisdiction over equitable claim of cestui que trust; action not barred by nonpresentation of claim in Probate Court, 104 C 169
where claim duly presented to executor has been disallowed, creditor may petition Probate Court for appointment of commissioners to decide upon claim, 105 C 601
notice of nonpayment of negotiable note must be sent personal representative if holder knew of indorser's death, 111 C 626
——paper listing note as "claim" against estate not sufficient, 111 C 626
assumption of mortgage *held* existing obligation requiring presentation, 111 C 649
presentation requires more than mere knowledge of claim by executor, 111 C 649
——claimant must bring it to his attention, 111 C 649
——where executor wrote mortgagor asking details as to instalment mortgage deceased had assumed, and mortgagor left copy of letter without giving details, *held* sufficient presentation, 111 C 649
——purpose of statute as to presentation, 111 C 653
——no particular form required, 111 C 654
upon application for extension question is not whether claim should be allowed but merely whether it should be permitted to be presented, 121 C 115
——claim prima facie of sufficient apparent merit to justify its presentation must be shown, 121 C 115
extension must be "for cause shown" and only where failure of creditor to present claim on time was "through no default of his own", 121 C 115
——where claimant refrained from presenting claim not because she was misled but because she elected to accept undertaking of heirs to provide for her care, no cause was shown for extension, 121 C 115
history and purpose of statute permitting extension of time, 121 C 117
taxes on real estate are "claim" within meaning of statute barring claims not filed within time limited by Court of Probate, 123 C 348
——statute de administrator liquidating taxes due on estate which comes "into his hands" does not apply to life estate so as to remove bar of time limited, 123 C 348
claimant's mere ignorance of law de presentation of claims within time limited not ground for granting him extension under statute, 123 C 360
——Probate Court exercises discretion in extending time; Superior Court reviews action only to determine its reasonableness, 123 C 362
——history of legislation, 123 C 362
——presumption of notice of limitation of time for presenting claims which has been duly fixed is as strong as that one knows the law, 123 C 364
written statement of claim required by statute, while condition precedent to suit, need not measure up to strict standards of pleading, 124 C 43
——purpose of statute to let administrator know what claim is and give him opportunity to examine and pass on it, 124 C 43
on appeal from extension of time to present claim against estate of husband, wife granted right to examine books in hands of executors of estate, 126 C 382
——extent of attorney's privilege of nondisclosure in such a case, 126 C 382
——question on appeal is, has claim sufficient apparent merit to justify inquiry into its soundness, 126 C 388
one to whom land is distributed, if compelled to discharge mortgage, has right to be re-

imbursed by the estate even though debt has not been presented it, 127 C 625

§ 6. ——Suits to Enforce Claims; Limitation of Right

prior to 1784 claims were not barred by distribution, K 429

on account stated with testator, evidence of mistakes inadmissible in defense; where time limited has expired and no claim for balance is made, 1 R 385

statute limiting time for suit on disallowed claim is a positive bar, 6 C 29

creditor not barred if claim originates after limitation, 6 C 264

Statute of Limitations begins to run against claims in favor of, when, 15 C 148

contingent claim; becoming absolute after time limited is not barred, 27 C 83

——equity proceedings against heirs on such claim is not the proper remedy, 27 C 83

representing estate insolvent after suit tried is no bar to full judgment, 31 C 278

validity of claim denied by administrator and accruing after limitation, should be first established by suit, 44 C 575

——if accruing after distribution, 44 C 575

settlement of account and distribution to heirs does not absolve estate from after accruing debts, 44 C 575

estate brought here by foreign executor is not liable here to creditors, 46 C 30

——creditor must resort to forum of original administration, 46 C 30

——distinction between case of property thus brought into state and that of property already here, which foreign executor has come here to secure, 46 C 30

statute limiting suit to four months, after refusal of administrator or executor to pay, 48 C 385

——refusal must be in unequivocal terms, 48 C 385

claim barred under statute may be used as set-off, but excess is not recoverable against estate, 49 C 93

claimants denied in foreign and principal jurisdiction may resort to estate here, 49 C 424

——claims not extinguished because of failure to sue in foreign State, 49 C 424

suit to apply value of collateral security wrongfully converted or released by holder, on debt of plaintiff, lies against executor, 51 C 154

Statute of Limitations suspended during settlement, 52 C 142

statute giving person incurring expense a right of action against estate is a cumulative remedy, 53 C 117

——not intended to affect relation of administrator to party rendering services or paying money for estate, 53 C 117

judgment lien cannot apply to land of estate, on a judgment against administrator or executor, 55 C 138

——nor can a levy of execution be made upon such lands, 55 C 138

estate liable on indorsement of notes of company; certain heirs guarantee bonds to relieve estate; *held* that heirs acquired equitable lien for money paid on guaranty; where estate was thereby saved from a heavy loss, 58 C 202

an equitable claim may be the subject of suit against the estate in Superior Court, 58 C 204

establishing claim by action; disallowance must be clearly stated, 73 C 323

actions against administrator on debts of decedent; not suspended during settlement of solvent estate, 73 C 324

where A's property descends to B and B devises it, rights of A's creditors against B's devisees, 73 C 399

rights of creditors after oral distribution of personalty, 75 C 35

limitations for presenting and enforcing claim by suit under statutes, 75 C 406

claim for amount of trust funds held by trustee seven years before his death can be made against his estate thirty years after death; relief is in equity, 83 C 75

if estate has been distributed, claim should be established and order of sale of real estate obtained, or decree in equity for refunding if personalty, 83 C 79

judgment against administrator in action on claim makes estate liable to pay it, 83 C 79

method to collect from legatee after distribution for a claim allowed thereafter, 83 C 79, 86 C 470

letters of administrator as such do not establish a new promise so as to remove limitation on claim even though administrator is sole heir, 84 C 54

whether an acknowledgment of a claim in an administration account is a new promise by administrator in his individual capacity, quaere, 84 C 137

adjudication of claim necessary before distributees of estate can be asked to refund, 93 C 559

——therefore if claim is barred because not seasonably presented, no basis for equitable remedy, 93 C 559

if legal claim is established there is no bar but laches to equitable remedy against distributees, 93 C 559

adjudication of legal claim against estate and equitable action against distributees are successive steps in one and same action, 93 C 559

in action on claim against distributed estate, representatives and distributees should be made parties, 102 C 644

——issues presented and proper form of judgment in such an action, 102 C 644

rights of creditors cannot be settled in an action to which they are not parties, 103 C 352

——nor where two estates with conflicting claims are managed by same executors, 103 C 352

successor to original executors not permitted to claim that creditors are barred by laches where condition was due to failure of original executors to settle estate speedily and to regard terms of will, 103 C 353

——maxim in pari delicto applied, 103 C 353

post-mortem claims; liability of executors and administrators under common law; direct remedy against assets of estate given by statute; what claims covered by statute; 106 C 602

if claim is presented no statute of limitations applies, 106 C 602

——but laches in enforcing claim may bar assertion of lien against lands of estate, 106 C 602

——although claim is still enforceable against general assets in hands of administrators, 106 C 602

creditor whose claim disallowed may either bring suit within four months, or apply for appointment of commissioners within one month after disallowance or one month after expiration of time for presenting claims, 115 C 605

limitation of right to bring action against solvent estate under §§ 4918 and 4920, Rev. 1930, *held* bar under former statute not applicable where claimant applies for commissioners under latter, 115 C 605

§ 7. ——Payment; Priorities

administrator may become personally liable for interest, K 40

——no interest allowed on average struck, K 40

one having claim arising after settlement of estate as insolvent, which proves solvent, may secure aid of court of equity to obtain property distributed to heirs in satisfaction of such claim, 5 D 419

mortgagee may have his dividend on amount above the security, 2 C 353

lien for debts continues how long, 6 C 264

——not annulled by distribution, 6 C 267

general assets are not liable to partnership creditors merely by direction of the will, 7 C 312

executor may pay a debt of estate represented insolvent, before report of commissioners, 11 C 355

duty to pay debts without reference to collateral security, 16 C 7

Probate Court in ordering dividend takes claims as found by commissioners without interest, 21 C 41

same order in paying claim applies to executor de son tort as to lawful executor, 30 C 335

order of payment when assets insufficient; expenses of last sickness, 30 C 335

foreclosure, after allowance of mortgage debt; creditor entitled to full dividend, until time for redemption has expired, 31 C 216

notes owned by intestate but payable to his wife, *held* assets of his estate if needed for debts, 36 C 474

——balance, if any, to be held to use of wife, 36 C 475

administrator may file bill to compel heirs receiving personalty to contribute to after-accruing claim; though heirs have still the real estate, 45 C 604

a tax against estate of nonresident *held* properly allowed as preferred claim under statute, 49 C 425

creditor does not waive his security by making no mention of it in his claim, 56 C 442

debts to be paid from personalty in first instance, 74 C 96

where creditor holds note as security, his dividend is limited to actual debt, 74 C 247

interest on claim granted from date of disallowance, 82 C 572, 96 C 384

legatee must pay proportionate share of after accruing claim, 86 C 464

compromise good even if foreign jurisdiction must approve, 86 C 464

compromise good even if outlawed claim included, 86 C 464

effect of failure to disclose security held for a claim, 88 C 537

overpayment of one creditor cannot cause others to lose as risk is administrator's, 94 C 526

order of payment of penalty tax laid on property not taxed during lifetime of deceased, 96 C 362

rule that mortgage is to be paid from personal estate applies to one given after decedent's death in substitution for earlier one, 102 C 328

——where testatrix mortgaged property to secure agreement to pay C a life annuity executors must decide how to provide annuity, 102 C 318

——need not exonerate realty by paying mortgage from personalty, 102 C 318

——but should set aside fund using principal and income to pay annuity and letting any balance remaining fall into residue, 102 C 318

in action on claim where estate has been distributed, contribution should be pro rata among those bound, 102 C 644

order of liability of respective portions of estate for payment of ante-mortem claims, 103 C 352
what assets are liable for debts of business of estate carried on by executors, 103 C 353
——personal liability of executors, 103 C 353
——farm not liable where it is first specifically devised and then residue of estate is devoted by will to carry on business, 103 C 353
how long lien of claimant on real estate lasts, 103 C 353
——effect of statutes providing that no sale not made in ten years shall be good where estate has been sold or mortgaged to bona fide holders, 103 C 353
debts, charges, expenses, etc., not payable out of realty until personalty exhausted, unless will directs otherwise, 105 C 230
lands specifically devised not subject to claims till all other assets exhausted, 106 C 602
——ordinarily administration charges have precedence over claims, 106 C 602
——but charges incurred solely in conduct of business for benefit of heirs or devisees come after claims, 106 C 602
——marshalling as between claims and these two classes of charges where laches prevents assertion of claim against lands of estate, 106 C 602
where claimant asserts priority as to part of claims and fails to show what part, all fall into lower class, 106 C 602
burden on claimant to establish that all or part of claim entitled to priority, 106 C 602
post-mortem creditor, paid in full, under no duty to refund in order to equalize distribution, 106 C 602
order of payment of debts of deceased insolvent, 115 C 402
payment of claims by administrator before final settlement of estate, 122 C 76

§ 8. Sales

expense of sale of land in another State not allowed against estate here, 1 R 182
heir, in ejectment by vendee of administrator, cannot set up that claims were unjustly allowed, 1 R 231, 2 R 271
estate here is not chargeable for expense of sale in another State, 1 R 413
equity compels vendee of administrator on insolvent estate to reconvey, when, 2 R 349
order for sale of all estate covers all that is known, whether inventoried or not, 2 D 313
court cannot appoint person other than administrator to sell real estate, 4 D 137
administrator is personally liable on covenant beyond his authority, 5 D 92
——estate so conveyed does not pass, 5 C 92
vendee's title not affected by administrator's failure to make return, 5 D 213
what is necessary to authorize an order for sale of land, 3 C 514
legacy is not a "debt or charge," within statute directing sale of land by Probate Court, 4 C 166
order of court to sell authorizes what kind of conveyance only, 4 C 513
——personally liable on covenants, if unauthorized, 4 C 514
real estate is a fund for debts on deficiency of personal assets, 6 C 264
court bound to pass order of sale, when, 6 C 265
deed must be adapted to convey the estate, 6 C 269
deed of administrator's interest merely is inoperative; administrator has no interest in land conveyed under order of court, 6 C 269
authority to convey must appear on deed, 6 C 386
——must be set out with what certainty, 6 C 386, 10 C 85
——if deficient the defect cannot be supplied, 6 C 387
authority to sell is a personal trust and must be strictly pursued, 6 C 387
order for sale of lands must recite excess of debts and charges, 9 C 14
——order of sale to pay legacies not charged on land, *held* invalid 9 C 14
deed by administrator should show authority from court to convey, 10 C 85
——need not recite reasons on which order is based, 10 C 87; contra, 6 C 386
order to sell realty to pay claim is not a judgment that claim is due, 13 C 506
nonpayment to heirs of balance derived from sale is a breach of bond, 15 C 123
property specifically bequeathed should be sold to pay debts, before estate specifically devised, 16 C 501
executor may sell and dispose of choses in action, 18 C 120
——one executor only may thus dispose of all the personalty, 18 C 121
——effect of sale of nonnegotiable note by one executor, the other dissenting, 18 C 122
——where the one selling is bankrupt, 18 C 123
as a general rule executor cannot purchase property sold by himself, 18 C 303
——whether advantage can be taken of such purchase at a late day, quaere, 18 C 303
executor or administrator cannot sell except for cash, 21 C 291
—liable on bond for loss by sale on credit, 21 C 291
consideration of deed may be less than sum mentioned in probate order, 22 C 276
new order of sale not necessary where invalid sale is made under a valid order, 27 C 239

difficulty of divison between joint devisees gives Probate Court no power to order sale, 41 C 11
——Superior Court should act cautiously de sale, 41 C 12
——circumstances *held* insufficient to justify a sale, 41 C 12
long delay of creditors in taking out administration is no forfeiture of their rights to have realty sold, 49 C 426
——that there is sufficient personalty in a foreign State is no objection to sale of realty here, 49 C 427
——if needed for debts the sale of realty is not a matter of discretion, 49 C 427
sale *held* valid under statute, though order did not specify whether sale should be public or private, 49 C 428
notice under statute *held* sufficient if publication of notice was in fact made in a town newspaper, 49 C 428
——though order of court specified only some county newspaper, 49 C 428
statute de, enlarges rather than restricts powers of Probate Courts, 60 C 67
——requires a hearing, exercise of sound discretion, and is subject to appeal, 60 C 67
statute applies to all estates in settlement at date of its passage, 60 C 67
——such a sale cannot prejudice any one's interest in the avails, 60 C 68
——no objection to a sale under statute that creditors may resort to executor's bondsman, 60 C 69
legislation de powers of Probate Court as to sale reviewed, 60 C 64
decree for sale to pay debts showing jurisdictional facts on its face is prima facie evidence of those facts, 62 C 152
——facts averred are open to contradiction but not to collateral attack, 62 C 152
where husband elects to take under will, he cannot thereafter, as executor, sell estate to make up his statutory share, 64 C 352
nature and requisites of power; written application; notice; burden of proof, 67 C 1
statute must be strictly followed, 68 C 412
land subject to life use in lieu of dower must be so sold as to protect widow's interest, 72 C 256
power of sale under order to sell all property to pay debts exhausted on sale of sufficient to pay these and settlement of final account, 77 C 374
——order to sell will not justify exchange, 77 C 374
contract to sell "as soon as possible after estate is advertised," etc.; administrator not estopped to defend on refusal of court to order, where refusal due to facts imparted to it by himself, 80 C 227
quaere, whether order for sale of stock can be made after executor, who was directed to hold it during life of legatee, has filed final account as executor, and accounted as trustee, then died, and administrator of estate has been appointed, 81 C 94
order which would compel one legatee to buy in shares of other or sell her own, in either case at a loss, properly refused, 81 C 95
fraudulent sale under order of court; when action accrued; remedy on bond is cumulative, 81 C 127
where sale is for division, a failure to distribute is a breach of the sale bond, not the original bond, 82 C 308
administrator's power to sell land at common law, 82 C 312
effect of sale of real estate on heirs' rights, 84 C 212
power to sell for distribution, 84 C 213
within discretion of Probate Court to order sale of real estate whether required to pay debts or not, 87 C 85
——can do so for distribution among heirs and its finding is conclusive, 87 C 85
real estate owned in common; effect of lease by executor and other joint owner, 93 C 707
if agreement is "subject to order of Probate Court and approval of trustees," these are a condition precedent, 95 C 400
——condition precedent is to be fulfilled within a reasonable time, 95 C 400
trustees' approval need not be by formal vote, 95 C 400
approval of Probate Court and trustees can be inferred by conduct and acts, 95 C 400
proceeds of real estate sold to be treated as real estate, 98 C 333
effect of inclusion of power of sale in will, 99 C 607
power of sale under statute limited to ten years' period as regards bona fide purchaser or mortgagees, 103 C 354
——specifically devised lands may be sold when, 103 C 371
liability on bond in sale of real estate persists until proceeds properly distributed; not discharged by filing of account, 105 C 230
dating bond before order of sale passed of no consequence if it is clearly intended to cover the order, 105 C 230
——estoppel by recitals, 105 C 230
——proceeds of bond are distributed as land would go, 105 C 238
——in final account of executors immediate expenses of sale are charged against proceeds, not against general assets, 105 C 238
——proceeds may not be used to pay claims, expenses or legacies, 105 C 239
trustee authorized to sell real estate within five years; *held* court could order sale thereafter, 105 C 261
express power to sell, lease and convey, does not carry power to mortgage, 105 C 261

except as provided by statute purchase by administrator is voidable at suit of heir, 105 C 557

——though he acquires only one-fifth interest in land, 105 C 557

——proper decree in such case where intermediate grantor not a party, 105 C 557

deed by administrator to dummy who reconveyed to him and five of six heirs without consideration, *held* voidable at suit of sixth heir, 105 C 557

mere failure of administrator to make return of sale does not invalidate title derived through it, 105 C 557

accepting return of sale is purely ministerial act; question as to conduct of sale must be made by objection to allowance of account, 105 C 685

no public notice of private sale necessary under act of 1921, 105 C 685

sale to near relation of fiduciary not presumptively fraudulent; valid if done in fairness and good faith, 105 C 685

sale must be for cash only, not on credit or by way of exchange; sale not invalidated by breach of this rule, but fiduciary liable for any loss, 105 C 685

property left in trust for conduct of business subject to sale for payment of business claims, 106 C 602

lands specifically devised not subject to sale until all other assets exhausted, 106 C 602

administrator, being real owner, procured title in himself by pretended sale to third party; *held* his conduct harmless, 108 C 37

estate of deceased person who has contracted to sell lands becomes personal assets in hands of administrator, 109 C 307

——when he conveys land to carry out agreement, he is not selling lands, and so need not give bond, 109 C 307

——purpose of requiring bond in sale of land, 109 C 315

where, under order of Probate Court, executors conveyed half interest in lands in payment of subscription of decedent to establishment of church, with reverter to "the original grantors, their heirs and assigns," deed upheld after many years, 109 C 529

——reverter runs to heirs of decedent, 109 C 529

——that entire interest of decedent not conveyed not sufficient to invalidate it, 109 C 529

——presumption that executors acted within authority and that Probate Court ratified their acts, 109 C 529

transfer of decedent's real estate by one having power of attorney to his own wife; oral agreement void under Statute of Frauds; power revoked by death, 114 C 539

in determining whether real estate should be sold Probate Court does not adjudicate validity of claims but only inquires whether reasonable cause exists to grant order, 114 C 689

conclusion of court that there had been such prima facie showing of indebtedness as to justify sale of real estate, sustained, 114 C 689

decree that trustee sell real estate made without issue being before court or application for sale, and where trustee not a party, void, 120 C 77

§ 9. Distribution

NOTE: For distribution under will, see WILLS § 66

§ 10. ——In General

prior to 1784 claims were not barred by distribution, K 429

none legal without order from Probate Court, K 429

administration de bonis non is not barred by distribution; nor by death of the administrator, 1 R 174

cannot sue for the taking of personal property before distribution, 1 D 151

by statute, prior to 1784, half-blood equally entitled to ancestral estate, 2 D 112

"next of kin," determined by rules of civil law, 3 D 211

cannot be made by distributors appointed by heirs and devisees, 3 D 264

heirs have no right to possession of personalty until distribution, 4 C 347

lien for debts is not annulled by distribution, 6 C 267

law of domicil governs in final distribution, 9 C 199, 21 C 582

——unaffected by our Statute of Distribution, 21 C 583

reversionary interest is distributable during life of dower tenant, 9 C 228

after return and its acceptance, powers of distribution cease, 9 C 230

on appeal may show distribution is unjust, 9 C 231

distribution of intestate personal property governed by laws of country where deceased had his domicil at time of his death, 16 C 127, 21 C 577

lex domicilii obtains as to transmission of chattels, 19 C 248, 21 C 582

——our Statute of Distribution does not affect the rule, 21 C 583

statute applies only to intestate estates, 19 C 317

court granting ancillary administration may distribute assets or refer it to principal jurisdiction, 21 C 585

effect of distribution on assenting heir and creditor, 22 C 277

distribution liable to be broken up by appearance and allowance of claims, 22 C 279
distribution cannot be set aside in equity, 24 C 246
death of widow pending distribution; her share vests in her heirs, 26 C 352
Statute de distribution of estate of minor applies only to intestacy, 28 C 339
——not a statute of descent, but of distribution, 69 C 618
distribution is not prevented by prior conveyance by heir of his share, 29 C 419
——the court in making distribution should disregard such deed, 29 C 420
whether a will can be considered in distributing estate which has become intestate, quaere, 30 C 533
title to note of intestate vests in administrator, 32 C 290
——administrator liable on bond for improper disposition of same, but a bona fide assignee would secure good title, 32 C 290
haeres factus generally takes what haeres natus would take, 40 C 348
construction of division by line east and west through homestead and hall of house, 40 C 485
evidence of distributors as to what they intended by certain language in distribution inadmissible, 42 C 266
construction of distributor's report; measurements disregarded for repugnancy, 43 C 548
mere order of distribution does not prevent debts accruing afterwards, 44 C 575
death of minor pending distribution; portion of such child to be distributed as estate of deceased parent, 48 C 584
——in such case statute does not apply, 48 C 585
duty of Probate Court to make distribution to persons originally interested, 53 C 37
——does not affect that heir has sold his interest, 53 C 37
purchasers are strangers to the estate and have no interest in the distribution, 53 C 37
heir-at-law may ask for ascertainment of heirs and distribution to them, 55 C 410
administrator who is also a distributee and who has fraudulently concealed the existence of another heir is not protected by an order of distribution, 55 C 411
——nor by actual distribution before appeal, 55 C 411
——nor by payment to other heirs under the belief that the order of court would protect, 55 C 412
after distribution of part of residue to a trustee the Probate Court has no jurisdiction of such trust fund, 56 C 442
——unless the matter is specially brought before it by notice to all parties, 56 C 442
description of land in; monuments control courses and distances; if repugnant, no rule of law that former controls, 64 C 421
in action by personal representatives of decedent for damages for injury resulting in death, in absence of averments to contrary, always presumed if there is no widow or husband or lineal descendants that there are heirs to whom distribution can be made, 64 C 483
succession to land is a privilege not a right, 70 C 211
estate must be before court in orderly way; if administrator is dead, a successor must be appointed, 70 C 377
power and duty of Probate Court to determine distributees, 70 C 377, 71 C 122, 81 C 161, 89 C 429, 90 C 561, 592
application for order of distribution irregular; court can refuse, until rights of parties are settled; where estate is all money, court can simply order it paid over, 71 C 128
generally as to distribution, 72 C 153, 75 C 33
ascertainment of beneficiaries as an incident of distribution, 72 C 322
——application for, apart from order of distribution, irregular, 72 C 322
statutory provisions must be carried out; administrator's account should first be settled, 72 C 559
parol evidence admissible to identify land in- 72 C 562
in division of testamentary gifts among heirs at law, rule of statute of distributions to be followed unless contrary intent apparent, 73 C 58
administrator may pay over balance without order of distribution when; where he is himself person entitled to receive, 75 C 410, 77 C 378
distribution as relating back to death, 75 C 598
court must ascertain distributees; approving distribution as implying that it has done so, 75 C 598, 78 C 626
long acquiescence in division may cause it to be upheld, 75 C 598
where only one legatee and devisee, court had neither occasion nor authority to proceed with a distribution, 77 C 378
distribution designates persons entitled but is not source of title; hence, if made to improper parties, gives no title; to "heirs" of living person, 78 C 485, 80 C 363, 89 C 427, 91 C 12
——on delivery of property title passes, 75 C 40
duty of administrator to apply for distribution, 78 C 622
distribution will not be construed so as to impute irregularities to court and distributors, 80 C 371

distribution of stock in fractional parts, 81 C 95
where heir of A who was heir of B mortgages interest in estate, and B's estate is only distributed after A's death, distribution relates back to A's death so as to make mortgage valid as to interest set off to A, subject only to charges on A's estate, 81 C 442
proceeds from sale of real estate distributed as the land would have been if no sale, 82 C 308, 90 C 143
Probate Court has no jurisdiction of controversies between distributees and strangers arising after decedent's death, 82 C 308
where sale is for purpose of division, failure to distribute is breach of sale bond, not original bond, 82 C 308
statute making distribution to heirs of life tenant prima facie evidence of distribution to children is not retroactive, 83 C 346
power to order sale of real estate for distribution; effect of same, 84 C 213
distribution to "T or his legal representatives" authorizes payment to T's executor or administrator; heirs have no right to funds directly, 84 C 323
discretionary to order filing of claims as in interpleader in order to get at pertinent facts involved in distribution of income, 85 C 434
division of an estate considered a distribution, not a sale, 86 C 463
distribution under statute protects administrator or executor, 86 C 463
if court approves settlement, fact that other party has not yet accepted is immaterial, 86 C 470
acquiescence in void distribution prevents objection to it, 88 C 686
on appeal from order of distribution neither party entitled to jury, 90 C 48
Probate Court has exclusive jurisdiction to determine distributees of intestate estate, 90 C 561
distribution of intestate realty recognizes preexisting right and divides in severalty what was held in cotenancy, 91 C 12
postponement of distribution and form it takes does not alter course of descent or its nature, nor source of title, 91 C 12
acquiescence in erroneous distribution may estop one, but does not furnish title or change nature of title, 91 C 12
duty of Probate Court to ascertain heirs for distribution, 104 C 97
distribution where estate consists wholly of cash, 104 C 97
specific devisees acquired title from will; heir-at-law from statute, 104 C 97
distributees of cash estate entitled to legal tender; but any other mutually satisfactory plan may be adopted, 104 C 271
property in this State of one domiciled in another will be distributed according to his will or the intestate laws of that State if not contravening our policy or prejudicing rights of creditors here, 105 C 192
proceeds of real estate distributable as land, 105 C 230
succession to personalty governed by law of decedent's domicil, 108 C 611
real estate in foreign State to be distributed in ancillary proceedings there according to its law, 110 C 36
——it cannot be distributed at domicil of decedent except by direction of court where it is located, 110 C 36
——distribution and administration should be of personal property wherever situated and real estate in State of domicil, 110 C 36
——distributors of husband's or wife's one-third share are likewise confined to real estate in domicil, 110 C 36
——though one-third share is measured by value of property here inventoried, 110 C 36
——thus Probate Court cannot accept distribution based on value of real estate in other States as fixed by tax appraisers, 110 C 36
——husband or wife entitled to income on share from date of death, measured by average income earned by estate, 110 C 36
distribution, not death of decedent, transfers title and ownership of personalty to beneficiary, 115 C 145
where beneficiary conveys interest during administration, distribution will be made to him as though transfer had not been attempted, 115 C 145
nature and effect of our Statute of Distribution, 115 C 145
——before distribution can be made, estate must be ascertained by settlement of account, 115 C 150
informal distribution of personal property to beneficiary will not affect amount of succession tax, 115 C 145
ascertainment of heirs and ordering of distribution requires order made after due notice, distinct from or in addition to allowance of final account, 120 C 178
——though return of distribution where estate is in cash or equivalent, accepted by Probate Court after notice, would be sufficient compliance with law, 120 C 183
——administrator may pay to one claiming as heir his share of estate without such order, but he assumes risk attendant upon an improper payment, 120 C 178
——so where administrator distributed estate to himself and C without any order, though final account set forth that there was this sum to be so distributed, he was not protected by the statute de payments

made "under and pursuant" to order of Probate Court, 120 C 178

right of inheritance becomes fixed at time of death and distribution relates back to it, 126 C 143

§ 11. ——Duties of Distributors

return of distributors to be liberally construed, 31 C 588

duties of distributors ministerial and statutory; cannot pass on validity of claims on estate, but must follow final account, 68 C 84

duties of distributors are statutory and ministerial, 110 C 36

——they distribute estate in hands of administrator after final account allowed, 110 C 36

distributors act in quasi judicial character, 111 C 589

——if all have notice, majority may act, 111 C 589

——no discrimination in duties between testate and intestate estates, 111 C 592

distributors proceed upon values determined by them as of date of distribution, 127 C 669

§ 12. ——Particular Classes of Heirs

natural children by the same mother are heirs to each other, 2 R 280

illegitimate child inherits from mother, 5 C 228

real estate bought with avails of ancestral estate is not ancestral estate, 28 C 342, 40 C 438

"ancestor" in statute de, means one from whom estate immediately descended, 37 C 403

statute gives parent no right to inherit ancestral estate, 38 C 407

illegitimate children are heirs through their mother of collateral kindred, 42 C 491

statute de ancestral estate refers to immediate, not remote, ancestor, 46 C 123

aliens can take personal estate by distribution, 51 C 435

personal representatives *held* to mean next of kin, 55 C 324

——distinction between personal representatives and legal representatives, 55 C 324

widow *held* to be excluded from next of kin, 55 C 327

statute de distribution of real estate derived from kinsman, to be construed strictly, 58 C 209

——minor died seized of real estate from maternal grandfather, *held* father did not take by implication under proviso in statute, 58 C 208

——estate goes to surviving maternal relatives, 58 C 210

collateral relative may take, though related through alien, 64 C 277

"representatives" means lineal descendants taking per stirpes, 65 C 89

statute legitimatizes children born before marriage not only for purposes of inheriting property but for all purposes, 69 C 302

testator's next of kin who are aliens cannot inherit real estate but entitled to their share of intestate personal property, 69 C 416

history and nature of distribution; estate of wife married between 1849 and 1877, 69 C 616

——statute as to distribution to one son on condition of his paying others considered, 69 C 611

history of provisions de distribution to widow, 72 C 153

statute as to ancestral estate construed; "legal representatives," 77 C 310

widow occupies no position of vantage over other distributees, 78 C 481

in determining "ancestral" estate, one looks to immediate descent, 81 C 177

proceeds of sale of real estate are distributed to those who would have taken the land, 82 C 308, 90 C 144

children includes illegitimate under our statute, at least as to mother, 88 C 282

children legitimatized by law of another State recognized here as heirs, 90 C 164

abandonment of husband or wife as forfeiting rights, 90 C 210

ancestral real estate is such as came by descent gift, devise of kinsman, 91 C 12

title in intestate realty vests in children subject to dower; can be divided only by conveyance or distribution, 91 C 12

"heirs at law" in popular sense indicates all those who would inherit real or personal estate upon decease of testator, 100 C 332

under statute, sister of whole blood takes in preference to brothers and sisters of half-blood, 100 C 338

election by widow to take life estate under statute constitutes surrender of all interest under will, 100 C 367

——effect as regards gifts to others, particularly remainders which were to take effect after life use given to her, 100 C 367

——entire estate to be included in computing her share, 100 C 370

——but not life insurance of which she was beneficiary, 100 C 372

——effect of, on other provisions of will, 100 C 367

election of husband or wife to take statutory share in place of provision by will applies as regards intestate portion of estate, 103 C 214

——unless election to take under statute is filed in time fixed husband or wife takes only what is given in will, 103 C 214
interest of husband or wife now arises from statute of distribution not from curtesy or dower originating in marriage, 106 C 179
——hence they are "heirs" in primary meaning of word, 106 C 179
quaere as to abandonment by surviving husband or wife which forfeits statutory share as also preventing an allowance for support, 107 C 101
——abandonment defined; intent need not exist at moment of separation but may be formed afterward; presents question of fact, 107 C 101
——marital rights and duties defined, 107 C 101
——payments by husband to wife do not of necessity prevent abandonment 107 C 101
——effect of agreement for separation, 107 C 107
agreement between husband and wife married prior to 1877 not effective to change survivorship rights unless recorded as directed by statute, 108 C 722
statutes of distribution are to be read with statute of adoption; child adopted under latter not included within term "children" in former, 115 C 163
right of inheritance of child is affected by adoption only to extent that the statute provides, 115 C 163
child adopted under Michigan statute which does not take away right of inheritance from natural parents *held* entitled to share in estate of natural father who dies here, 115 C 163
right of inheritance of personal property determined by law of deceased's residence, 115 C 165
grandchildren of deceased child are within term "legal representatives" in statute of distribution, 115 C 239
——like interpretation given to these words when used in relation to brothers and sisters of intestate, 115 C 239
lineal descendants of any person represent their ancestor ad infinitum, 115 C 239
where will made no specific provision for wife out of remainder, she is not put to her election under statute, 115 C 269
in absence of clear intent, life tenant who is also heir cannot be excluded from share in remainder interest to be distributed according to statute, 115 C 269
where husband elects to take statutory share in lieu of provision made for him by will, in setting off that share intent of testatrix must be as little disturbed as possible, 120 C 77
distribution to husband of statutory share under will including real estate life use of which was specifically devised to him subject to conditions, with remainder to charitable trust, *held* void and property should be turned over to trust immediately, 120 C 77
finding that original separation was against will of husband and that widow abandoned him without foundation in evidence, 123 C 424
Probate Court may revoke or modify decree of allowance to widow, 123 C 424
even though husband and wife separate by mutual consent, abandonment may take place within statute of distribution if after separation surviving spouse evinces intent not to resume marital relationship, 123 C 425

§ 13. ——Partial Distribution

distribution of part only of sum by administrator through mistake may be corrected by subsequent distribution, 54 C 230
——the additional amount should be found and its distribution ordered by Probate Court, 54 C 230
within power of Court of Probate to order partial distribution to remaindermen where it can be done without prejudice to life tenants, 73 C 58
on partial distribution, in estimating amount to be set aside for payment of debts and expenses, allowance should be made for interest or income fund would earn, 102 C 318
——any unused portion of such income reverts to corpus of estate, 102 C 318
partial distribution should not be ordered where further demands on estate cannot be determined, so executor can be protected, 110 C 658
——court can order it but should only do so where facts are clear and upon filing and acceptance of account, 110 C 658
——where suits against executor were pending and no account filed *held* it should not have ordered distribution, 110 C 658
——under our practice, where ordered distributees are not required to give bonds, 110 C 661
——final distribution can only be made after filing and acceptance of final account, 110 C 658

§ 14. ——By Agreement

heirs may by agreement take other than statutory division, 14 C 122
distribution by agreement works as an estoppel, when, 17 C 350
Probate Court should disregard division by heirs not perfected under statute, 54 C 226
——such division does not supersede or preclude a regular probate order for, 54 C 226

——though it may be good inter partes and enforced in equity, 54 C 227
——distributors would ordinarily follow division made by the parties, 54 C 227
——court would not disregard heir's division and on its own motion pass an order for distribution, 54 C 228
informal distribution of personalty; rights of creditors. 75 C 33
agreement among parties can give irregular distribution no validity, 80 C 363
informal distribution is valid; division agreed to among heirs, 86 C 471, 89 C 427
mutual distribution implies finding that parties are heirs; appeal lies from order receiving and recording mutual distribution, 89 C 421
distribution of an estate is a mere partition or division to distributees subject to debts, 89 C 421
——no conveyance by each distributee to all the rest necessary but such a distribution complies with statute if valid in other respects, 89 C 421
mutual distribution may be executed before administrator's account is accepted though it cannot take effect until afterwards and should be received and recorded then, 89 C 421
acceptance and recording of mutual distribution amounts to finding that persons described are legal distributees, 89 C 421
a mutual distribution which has been consummated, no other distribution being made, may be recorded thirty years after execution, 89 C 421
action of Probate Court in recording mutual distribution assumed to be correct, 89 C 422
——lack of jurisdiction not assumed because three of its four signers are dead, 89 C 422
receiving and recording mutual distribution makes it valid; no other act necessary, 89 C 422
in mutual distribution parties may divide property as they see fit, 89 C 422
to attack validity of mutual distribution one must appeal from order receiving and recording it, 89 C 422
mutual distribution same in testate as in intestate estates, 104 C 97
mutual distribution as a contract; binding though informal or defective, provided all interested are parties, 104 C 97
husband married prior to 1877, *held* not necessary party to a mutual distribution signed by wife and other beneficiaries, 104 C 97
nature of mutual distribution, 104 C 97
——may be made of intestate part of testate estate or where will leaves uncertain division of specific property among several, 104 C 97

§ 15. Rights of Heirs

NOTE: For rights of legatees and devisees under will, see WILLS § 58
in ejectment by vendee of administrator, heir cannot set up that debts were unjustly allowed, 1 R 231, 2 R 271
cannot sue for the taking of personal property before distribution, 1 D 151
heirs are tenants in common until distribution, 5 D 218
cannot recover rent promised to deceased lessor when, 4 C 189
heirs have no right to possession of personalty until distribution, 4 C 347
nemo est haeres viventis, 10 C 452
rule de support of widow and family during settlement, 19 C 418
mere charge of advancement without actual transfer does not deprive child of full share of intestate estate, 23 C 521
widow's distributive share vests in her heirs on her death pending distribution, 26 C 352
haeres factus generally takes what haeres natus would take, 40 C 348
bill in equity does not lie to compel heirs to pay from their realty a claim accruing after distribution, 44 C 577
allowance to widow by Probate Court under statute cannot be attached by creditors, 55 C 118
wife by written agreement accepting certain sum in lieu of statutory share is entitled to an allowance, 56 C 587
under statute, allowance is not a property right, nor an apportionment, nor a share from the estate; purpose and nature of allowance, 56 C 588
equity permits heirs apparent to convey their interest, 64 C 153
discretion of court as to widow's allowance; power to construe ante-nuptial agreement as affecting, 66 C 133
rights of heir determined at, and vest at, death, 67 C 1, 69 C 616
as to mortgage indebtedness, 68 C 198, 74 C 96, 459, 78 C 481, 79 C 364
allowance may be given, though widow is legatee; payments to be made monthly; such payments extended beyond year; history of right; how amount fixed; appeal, 69 C 684
long acquiescence in wrongful allowance of curtesy gives it the character of a family settlement, to be upheld, 75 C 598, 91 C 20
on death of intestate, heirs become tenants in common, 75 C 601, 83 C 351, 91 C 12
heir-at-law may mortgage interest in intestate's land but subject to being divested if land is sold for debts of estate, 84 C 208
——if sold for distribution, his share held subject to the mortgage, 84 C 208

heir-at-law takes title to real estate immediately at death of testator, 84 C 570
——can enter and protect premises in spite of administrator's statutory rights, 84 C 570
liability of heirs to contribute where claim arises after distribution, 86 C 470
real estate vests at once in the heir; to be taken only for debt and other conditions arising and only by court's order, 87 C 85
heir to whom property is distributed can plead Statute of Limitations against half-brother who had long disappeared, 90 C 561
statute permitting allowance for support of widow does not apply to widower, 91 C 76
one claiming to be heir at law of decedent may prove legitimacy by church marriage record and baptism record, 93 C 38
obligation to refund to pay claim established after distribution, 93 C 559
establishing claim and demanding contribution from heirs may be joined in one action; if claim is barred, whole action fails; if valid, only laches bars further equitable relief, 93 C 559
fact that other residuary legatees might be born no help to one asking for contribution and not entitled to it, 93 C 590
effect of lease of land made by executor of one tenant in common after the estate is settled, 93 C 707
distribution of intestate estate not necessary to give title to heirs, 96 C 332
——heirs are beneficial owners subject to payment of debts, 96 C 332
——if estate is fully settled, in an action by heirs to recover a fund in which deceased had a vested interest, technical title of administrator may be disregarded, 96 C 332
widow as sole heir; "heir" is construed under law existing at death of relative, 98 C 821, 103 C 122, 106 C 178
sole distributee of solvent estate can at any time direct payment of funds to anyone, and when made payment will discharge executor, 99 C 176
heirs and distributees, without administration, can convey good title to land of decedent, subject to obligations arising in administration of estate, 109 C 453
——title to lands vested in them at death of decedent subject to claims arising in administration of estate, 109 C 456
at death land vests in heirs, subject to payment of debts, 109 C 538
so long as it is unsettled or at least till order of distribution, property is in custody of law and does not become property of heirs or legatees, 111 C 452
rights of heirs and legatees in personal property determined by law of State where testatrix died, 111 C 463
the legal title to real estate passes to beneficiary at death, 115 C 127
the legal title to personal property vests in executor or administrator and the rights of a beneficiary accruing upon death are purely equitable, 115 C 128
——title and ownership passes only upon distribution, 115 C 128
——the word "transfer" in the succession tax law applies to the transfer of complete ownership perfected only by distribution, 115 C 128
beneficiary of personal property cannot convey title but may convey such interest as he has, 115 C 145
recovery for death by wrongful act is for benefit of heirs of decedent and not for decedent's estate in general, 116 C 95
heirs at common law are coparceners of real estate of deceased, 119 C 233
—even if this estate is recognized here it does not differ from tenancy in common as far as right to possession of property is concerned, 119 C 233
where husband elected to take statutory share of wife's estate and received it, he could not afterward claim a portion of the estate which was declared intestate, 121 C 594
prior to 1877 a surviving husband was not heir of deceased wife, 121 C 596
——life interest which he took in real estate as tenant by curtesy had origin, not in succession at death, but in pre-existing marital status, 121 C 596
——present right to inherit wife's estate arises solely under terms of statute, 121 C 596
it is only upon delivery of personal property to beneficiary through legal distribution after administration is complete, that he acquires legal title, 123 C 196
interest in real estate of one who dies intestate vests in heirs, 127 C 120
mortgages are treated as personal property; administrator entitled to debts represented by them, 127 C 161
at death of intestate real property vests at once in heirs; administrator does not have title, though it may be brought within scope of administration so far as necessary, 127 C 168
title to intestate lands vests at once in heirs subject only to debts and expenses of administration and distribution not necessary to confer title, 127 C 723
where real and personal property is given on conditional limitation, beneficiary is entitled to possession of real property on settlement of estate, 129 C 350
personal property should also be delivered to him without any security on order of Probate Court, 129 C 350

——recourse of any interested party seeking security would not be to Probate Court but to court having general equitable powers, 129 C 350

right of life tenant of personal property to its possession was recognized by common law; bond required only where there was danger property would be wasted, 129 C 353

by statute, Probate Court now has authority to order giving of a bond and executor should call matter to court's attention before distribution of property, 129 C 353

ESTATES ON CONDITION

See also DEEDS § 10; WILLS §§ 37, 45

on breach of condition, actual entry or claim by grantor necessary to revest, 1 C 84

——action of disseisin is not a sufficient claim, 1 C 92

forfeiture for breach, when waived, 1 C 91

conveyance; reconveyance to be void on fulfillment of contract to support; effect of the transaction, 6 C 345

breaches, whether of precedent or subsequent conditions, are relievable in equity, when, 7 C 45

conditional fee of common law is not known here, 12 C 330

no technical words are essential to create, 14 C 96, 23 C 372

grantee of first grantee takes only same conditional interest, 14 C 98

when deed creating estate on condition is treated as a mortgage, 14 C 98

condition in deed that grantee pay $100 is not fulfilled by set-off, 18 C 540

character of entry required to revest estate after forfeiture, 18 C 541

——object of entry must in some way be shown, 18 C 542

failure as to time relievable in equity if compensation can be made, 20 C 133

legacy given dependent on expenses of litigation is not opposed to public policy, 20 C 342

estate accompanied by trust but not conditional is not forfeited by alienation, 23 C 371

creation of condition must appear from fair construction of the intention, 23 C 372

mere declaration in grant of use to which it is to be appropriated, not a condition, 23 C 372

conditions remain a charge on land devised, when, 24 C 247

land deeded on condition that no liquor should ever be sold thereon, valid, 25 C 247

——question of grantee's knowledge and conduct is one for jury, 25 C 246

——sale, with grantee's knowledge, a forfeiture; otherwise, if grantee be ignorant and in no default, 25 C 247

right of entry for condition broken not assignable at common law, 31 C 468

forfeiture, on use for purpose other than that named, on payment of appraised value, a condition subsequent, not a limitation, 31 C 477

——entry required to enforce forfeiture, 31 C 477

——appraisal clause is only a superadded duty, 31 C 476

——equity cannot appraise or compel grantee to acquiesce, 31 C 479

devise on condition that devisee should relinquish all claims to father's estate, 35 C 212

——family arrangement; implied assent, 35 C 214

devise on condition that devisee pay bequests within a year, determination to be signified within four months, 46 C 555

——determination to accept within four months creates no legal obligation to pay, 46 C 556

——devisee may decide not to pay at any time during the year, 46 C 556

provision in deed that if building shall be erected costing less than $4000, tract shall revert, *held* a condition of title rather than a mere limitation, restriction, or personal covenant, 54 C 62

right to enter for condition broken is not assignable at common law, but such interest is now assignable by statute, 54 C 62

tender of balance of purchase price is a condition precedent to the right to claim a good title unless tender is rendered useless by other party, as by absolute refusal to give a deed, 54 C 329

a parol agreement as part consideration, restricting use of land, is not merged in deed, 61 C 482

——where grantee sold land with parol condition that no intoxicating liquors should be sold thereon; *held* injunction lies for breach, 61 C 482

conditions subsequent are not favored; will be construed as covenants if practicable, 62 C 388

——always construed as covenants if doubtful in language, 62 C 388

——are created only by express terms or by clear implication, 62 C 388

right of re-entry for breach of condition waived by failure to insist on condition for forty-five years, 62 C 388

land conveyed for cemetery; grantee to maintain fence; obligation of grantee *held* a covenant, 62 C 389

land conveyed for a cemetery only; act of legislature prohibiting further burials *held* not a breach working forfeiture of title, 62 C 389

——this exercise of police power destroyed the condition and rendered grantee's title absolute, 62 C 390

——rights of grantor not revived because act gave city the right to take the land for a park, 62 C 390

——grantors not entitled to part of compensation paid grantees by city for the land, 62 C 391

condition will be construed to be subsequent rather than antecedent, if possible; but intent controls, 74 C 630

re-entry required on breach of condition subsequent to revest estate in grantor, 74 C 630

assignee of reversion in an estate granted to a life tenant on an express condition cannot avail himself of breaches of the condition which occurred prior to his acquisition of title, 76 C 586

unintentional failure to perform condition will not defeat grantee's title, 84 C 512

grantor's heirs at law and administrator have no greater right to demand forfeiture than grantor had, 84 C 512

conditional fee of English common law never recognized in Connecticut, 88 C 292

vested estate will not be forfeited for breach of a condition subsequent where performance has become impossible by change of law, 96 C 182

conditional limitation defined and distinguished from estates upon condition subsequent, 109 C 529

——reverter if charitable use ceases, to grantor, his heirs and assigns, is latter, 109 C 529

estate on condition subsequent brings estate back to grantor, 109 C 529

——estate given absolutely but title subject to be divested, 109 C 529

——does not violate Statute against Perpetuities, 109 C 529

estate on conditional limitation carries estate over to third person, 109 C 529

——estate granted until event happens, 109 C 529

——may violate Statute against Perpetuities, 109 C 529

giving effect to reverter in action to quiet title does not constitute enforcement of a forfeiture by a court of equity, 109 C 529

reservation of power to revoke trust as condition subsequent, 110 C 22

——right of beneficiaries takes effect at creation of trust, though not in possession till donor's death, 110 C 22

——conditions subsequent are favored, 110 C 31

where equity permits revocation in absence of express power it is because interests nominally absolute are really defeasible, 110 C 22

since statute of 1864 a right to enter for condition broken may be assigned by original grantor, 110 C 267

conveyance of land so long as it is used for a school constitutes base fee, 110 C 267

——leaves reverter in grantor which he may assign, 110 C 267

——this will pass under deed of whole tract of which land was a part, though not mentioned, 110 C 267

gift of residue to town if it should build bridge within twenty-five years, but if not its rights therein should cease and terminate, was on condition subsequent, not precedent, 112 C 216

gift over, if wife remarries, gives her defeasible fee charged with conditional limitation, 112 C 578

where lease states as express condition that it will terminate on assignment for creditor, words do not necessarily establish conditional limitation, 114 C 556

until breach of condition proprietor of determinable fee has all rights and privileges of owner in fee simple, 119 C 106

——grantor retains at most a mere possibility of reverter, 119 C 106

——holder of determinable fee regarded as owner for purposes of taxation and tax exemption, 119 C 106

ESTATES TAIL

See Wills § 33

ESTOPPEL

§ 1. In General
2. By Judicial or Legislative Record
3. By Deed or Bond
4. Equitable and Other Estoppels
5. ——General Nature and Essentials
6. ——Express Representations and Admissions
7. ——Silence; Failure to Assert Right or Title
8. ——Acquiescence and Acceptance of Benefits
9. ——Clothing Another with Apparent Title or Authority
10. ——Negligence; Injury to One of Two Innocent Persons
11. ——Estoppel by Contract
12. ——Miscellaneous Particular Cases
13. Persons Affected by Estoppel
14. Pleading and Evidence

See also Agency; Insurance § 20; Judgments § 13; Land Records; Waiver

§ 1. In General

plea of estoppel is not favored, 4 C 281, 44 C 270

must be reciprocal, 5 C 132

——this principle is inapplicable to deeds poll, 10 C 434

must be certain to every intent, 8 C 116

unknown in equity and not favored in law, 9 C 485, 11 C 352

technical accuracy required; not to be open to subtle, scrupulous objection, 10 C 433

equitable estoppel in pais applied to realty with extreme caution, 24 C 549

not to be favored, if calculated to do injustice in particular case, 33 C 585

courts will not from a possibility raise up an estoppel, 44 C 430

party claiming, must show that he will be damaged if estoppel is not allowed, 47 C 218

doctrine of, discussed with authorities, 57 C 263

is intended as a protection against loss and not as a means of gain, 58 C 85

estoppel is only to prevent a loss; not intended to secure a positive gain, 87 C 138

waiver and estoppel closely related; waiver influences conduct of other party and thereupon element of estoppel exists, 90 C 203, 93 C 534

state referee cannot determine law relating to estoppel in pais, 101 C 534

estoppel is not favored, 105 C 382

estoppel defined, 105 C 488

contract void because of conflict with statute, not rendered enforceable by estoppel, 106 C 34

nature of estoppel, 110 C 644

estoppel as basis of waiver, 112 C 236

estoppel distinguished from waiver, 118 C 548

true basis of doctrine of partial performance is estoppel, 124 C 507

recovery cannot be based on estoppel, which is available only for protection and cannot be used as weapon of assault, 127 C 431

estoppel is restricted to prevention of wrong and cannot be used to secure unjust advantage; available only for protection and not as weapon of assault, 129 C 194

§ 2. By Judicial or Legislative Record

See also Judgments § 13

cannot be founded on a judgment reversed on error, K 294

verdict is never an estoppel unless it decides the precise point, 4 D 277

judgment is an estoppel only when the precise point was in issue, 4 C 280, 12 C 373

——and this the record alone must show clearly, 4 C 281

judgment in ejectment is no estoppel to defendant afterwards acquiring title from stranger to prior judgment, 5 C 131

former judgment by default in ejectment is no estoppel, 5 C 132

officer is not estopped to deny validity of writ under which he acted, 6 C 141

decree in equity based on a general finding is no estoppel, 7 C 382

judgment is no estoppel where court's want of jurisdiction appears, 7 C 383

party is estopped by award deciding title to land, 11 C 249

judgment in suit to which administrator was party is no estoppel to purchaser of estate, 12 C 374

levy of execution is no estoppel as to either debtor or creditor, 13 C 571

facts found, not necessary to decree nor averred, do not constitute, 17 C 362

defendant in account not estopped from claiming sum larger than demanded in declaration previously brought by him, 24 C 197
sheriff estopped to set up Statute of Limitations to suit for deputy's default, when, 38 C 195
admissions made on and for purpose of one trial are no estoppel on subsequent trial, 40 C 317
effect of decree based upon advice of Supreme Court, on same questions again raised, 47 C 350
finding on motion in error will not operate as estoppel on new trial, when, 49 C 30
judgment in trespass where title is not in issue will not estop in suit de title, 52 C 22
decree of Probate Court assigning dower does not constitute, as to party interested and aggrieved, 63 C 349
——as where estate is necessary to pay debts, 63 C 351
landowner not estopped to claim defect in layout of street from report of committee, which city claimed constituted a judgment which he accepted by failing to appeal, 68 C 401
to attack validity of legal proceedings or form of judgment after voluntarily entering as a party, 77 C 382
ruling upon demurrer in suit which is afterward withdrawn is not such final judgment as is essential to create estoppel by record, 79 C 493
right of assignee of deceased judgment creditor to sue on judgment, 82 C 208
on power of court to change decree de custody of children against one who originally invoked its action, 83 C 479
in second suit on different cause of action between the same parties, judgment operates as estoppel only on points litigated and determined, 83 C 634
——on same cause of action estops on all points that might have been litigated, 83 C 634
judgment limited to particular land does not estop one from asserting title to another piece, 89 C 215
where judgment was rendered against city for defect in sidewalk, property owner not estopped when city sues him from showing he was under no duty to correct defect, 91 C 254
stipulation in automobile suit that both parties were licensed drivers does not estop one who honestly believed he was from resisting application for new trial on grounds of new evidence that he was unlicensed, 99 C 530
in workmen's compensation case where insurer voluntarily agreed to compensate employee, and commissioner made award accordingly and later made a modified one, which was complied with, too late for insurer to claim injured party not employee, 100 C 180
in replevin, affidavit of value does not estop parties to show true value of property, 104 C 501
estoppel of party to object to judgment entered upon his stipulation, 110 C 215
is applicable to every completed transaction under a law, whether valid or not, 112 C 236
——that law unconstitutional nil sig., if there has been an opportunity to attack it, 112 C 236
petition for new trial is part of original action and no estoppel arises against it by reason of judgment in that action, 114 C 736
files of Superior Court as evidence in support of claims of res adjudicata and estoppel by judgment, 115 C 36
suit for failure to perform building contract; defense of failure of owner to pay; judgment in suit to foreclose lien by builder as res adjudicata; estoppel by judgment, 115 C 36
validity of provisions of will devising remainder interests to heirs of life tenants not finally adjudicated by decree distributing remainder interest after death of one of them; no estoppel by judgment, 116 C 396
where it was alleged in the appeal and admitted in answer that zoning board of appeals granted application, appellant estopped from claiming it did not, 118 C 178
decree of Probate Court accepting final account would create estoppel only as regards items within administration of estate, 126 C 324
estoppel by judgment does not include issue which was not, and could not be, litigated in preceding action, 126 C 349

§ 3. By Deed or Bond

lessee estopped to deny landlord's title, 1 R 77
——though landlord had no title, 3 C 42, 5 C 209, 301
unauthorized conveyance by administrator; distribution of same estate to him as heir; he and his grantees estopped to deny his authority, 5 D 92
subsequently acquired title by grantor estops him, 5 D 483
tenant not estopped to deny landlord's title after termination of lease, 3 C 42, 5 C 301
lessee by deed poll is never estopped to deny lessor's title, 3 C 42
tenant may show that relation of landlord and tenant has ceased, 5 C 301
party executing deed cannot dispute it or any fact therein recited; so all claiming under or through such person, 7 C 220

simple quitclaim or release is no estoppel as to releasor, 7 C 257

covenants in mortgage back are no estoppel to vendor's similar covenants, 10 C 433

party not signing deed is not estopped to deny it by his mere acknowledgment, 13 C 201

instrument to create estoppel must be clear, precise and unequivocal; solely relied on by party to establish his right, 16 C 418

if deed with covenants operates merely as, who are bound by, 19 C 226

mortgage assignment absolute in form; secret understanding; compromise with assignee; assignor *held* estopped to deny validity of assignment, 24 C 464

party *held* concluded by dates in bond in suit, 26 C 49

party to deed is not estopped to deny that it was properly attested, 26 C 200

party accepting deed describing incumbrance is not estopped from denying incumbrance, 44 C 326

grantee not estopped by deed unsigned, though acknowledged, 44 C 326

conveyance of marine railroad with all appurtenances; subsequent conveyance of adjoining land; subsequent grantee estopped from claiming encroachment, 52 C 433

grantor estopped from closing park dedicated to adjoining landowners, by deed referring to map showing park and by representations, 57 C 39

obligor in bond substituted for property attached is estopped to deny debtor's interest in property, 58 C 432

——but may still reduce the damages by proof of the value of such interest, 58 C 436

by replevin bond, 64 C 77, 77 C 183

of surety on bond, though negligent in not reading it, 67 C 497

from failure to read written instrument, 67 C 497, 72 C 628, 80 C 28

estoppel by bond referring to contract performance of which is condition of bond, where contract is made by de facto board, 68 C 495

to deny date of certificate of lien on record as against later incumbrancers, 71 C 95

none, from grant of "any right of way that may exist," 72 C 188

estoppel of one who executes deed reciting mortgage, to deny validity of mortgage, 72 C 721

husband cannot attack deed of wife after assenting to it, 72 C 721

by attachment bond, 74 C 173

estoppel by warranty in deed; nature of estoppel, 76 C 48

by officer's receipt, 79 C 333, 87 C 99, 90 C 574, 92 C 139

no estoppel from acceptance of lease from administrator, widow, and heirs, to claim lack of title in intestate, 79 C 493

as against one who has gone into possession as a tenant for years under an indenture, the estoppel to deny lessor's title raised by lease does not expire with term of lease, 79 C 493, 81 C 702

estoppel of tenant to deny effect of description in lease, though ignorant of it when he executed lease, 80 C 26

deed of one ousted valid against grantor and his heirs by estoppel, 81 C 547

tenant estopped by lease to question title of lessor; fraud in executing lease, 81 C 702

estoppel by lease ceases on actual surrender of premises; disclaimer to hold under lease not enough, 81 C 702

release of claim to land and accepting a lease of the releasee estops lessee and all under him from claiming title, 83 C 386

mortgage by heir of his interest in intestate estate operates by way of estoppel or assignment, 84 C 208

grantor estopped by recital in the deed, 87 C 618

one estopped from claiming title under unrecorded deed as against a creditor, 89 C 35

no estoppel by B's deed as executor of a claim by B to prescriptive use of a passway on land conveyed, 90 C 241

after returning property to officer in accordance with officer's receipt, one is not estopped from claiming property as his own, 90 C 570

parties exchanging real estate between themselves are equitably estopped from claiming incumbrances are a breach, 91 C 652

officer's receipt estops one from denying property belonged to defendant, 92 C 139

surety estopped from denying truth of recitals in the obligation, 92 C 139

waiver of forfeiture of a lease by breach of terms based on estoppel, 92 C 144

lease by tenant in common and administrator of deceased tenant in common, after settlement of estate, operates as estoppel against living one and permits heirs to assent to its terms if they wish, 93 C 707

conditional vendee of personal property who assumes payment is estopped from denying validity of mortgage, 95 C 182

one who has assumed mortgage cannot contest its validity or show amount assumed is not due upon it, 100 C 91

estoppel at common law by lease under seal, 102 C 565

tenant estopped to deny landlord's title only so long as he retains possession, 102 C 562

where defendant secured return of attached property by giving bond, he and surety are estopped to deny validity of attachment, 102 C 684

witness to lease not presumed to know its contents; not estopped to assert its invalidity if he purchases property after recording, 104 C 291
estoppel of surety by recitals contained in bond, 105 C 230
of grantee who agrees to pay any judgment secured upon existing attachment, to dispute validity of attachment, or its amount, or take advantage of substitution of cause of action made after attachment, 107 C 52
where contract was valid as a whole and party has long enjoyed its benefits, he is estopped to claim invalidity of single provision, 107 C 340
grantees in deed cannot rest rights upon it and attack validity of grant by executors because it failed to convey entire interest of decedent in land, 109 C 529
of lessor to claim certain construction of lease, from inducing lessee to rely on another construction, 111 C 700
of owner of tract to close highways to lot owners in tract laid out in accordance with map, 112 C 28
of landowner to deny predecessor's title, 112 C 152
defendant *held* estopped by terms of bond to deny that there was a valid attachment, 112 C 370
deed required consent of three-fourths of other lot owners for maintenance of store; plaintiff not estopped from suit for injunction because his grantor gave consent; nor because of defendant's expending money, 114 C 39
bond reciting that an attachment had been placed on property of J and E estopped parties claiming J had no interest, 114 C 98
——though they might show limited extent of his interest, assuming burden of proof, 114 C 98
where owner of tract makes map showing streets and sells lots referring to map, lot owners have right to have streets kept open, upon principle of estoppel or implied contract, 118 C 187
estoppel to deny title; requisites: some conduct or statement inconsistent with present claim of title; reliance in good faith thereon; resulting injury, 120 C 73
grantor conveying land bounded on street is estopped to deny existence of a street at least sufficient to entitle grantee to a right of way over land so referred to, 120 C 518
——rule applies whether or not street is existent at time of conveyance, 120 C 519
——no covenant implied that street will be made and maintained fit for travel, 120 C 519
if grantor sets forth in instrument that he is seised of particular estate which deed purports to convey, or if such seisin is affirmed expressly or impliedly, he and all in privity with him will be estopped to deny he was so seised at time of conveyance, 123 C 117
where mortgage describes land and recites it is subject to mortgage, conveyance is of an equity of redemption and warranty and estoppel under it will go no further than to prevent mortgagor from retaining any interest by subsequent conveyance adverse to that title, 123 C 117
——so where second mortgagee was foreclosed out by first mortgagee and mortgagor subsequently purchased land from first mortgagee, mortgagor is not estopped from asserting title derived by the reconveyance, nor is second mortgage revived, 123 C 117
stockholders who had previously signed proxies to be voted for voluntary dissolution of corporation, not knowing facts, neither waived right nor were estopped to ask appointment of receiver, 127 C 25
even estoppel by deed is subject to limitation that it cannot be invoked by one through whose misrepresentation a statement was inserted in deed, 129 C 194

§ 4. Equitable and Other Estoppels

§ 5. ——General Nature and Essentials

acts constituting, are presumed to be acts of deliberation, 9 C 485
an estoppel affecting right of party in real estate may be created by matter in pais, 17 C 346
matters of estoppel in pais consist of acts or declarations of a person whereby he induces another to alter, injuriously to himself, his previous position, 17 C 346
words or conduct inducing injurious action operate as, 18 C 153, 450, 19 C 265, 20 C 21, 568, 22 C 451, 25 C 128, 27 C 289
acts to be "wilful" need not be malicious or fraudulent, 25 C 128, 57 C 264
acts or silence must work prejudice to adverse party to create, 51 C 160
ignorance does not excuse if party making representations should have known; or in due course of regular duty party should have ascertained, 57 C 264
one setting up estoppel in pais must himself show due diligence to ascertain truth and good faith, 58 C 413, 450
implies some fraud or neglect of duty, 58 C 450
nature and elements, 66 C 17, 96, 69 C 84, 70 C 275, 84 C 504, 512, 87 C 114, 92 C 431
prejudice to other party necessary element, 79 C 38, 72 C 530
party prejudiced and action causing prejudice necessary, 80 C 364, 74 C 497
estoppel in pais does not shut out but lets in whole truth so that matter may be determined irrespective of legal rights, 84 C 512

circumstances of case determine estoppel, 87 C 114
knowledge of facts by person affected is essential; may be imputed to him, 91 C 410
the office of estoppel in pais is to show what equity and good conscience requires irrespective of legal rights, 91 C 652
there must be a representation or concealment of material facts made knowingly to one ignorant of them with intent he should rely on them and his actual reliance, 92 C 432
person claiming estoppel must have suffered loss, 94 C 597
equitable estoppel arises only where there is an intended deception or gross negligence amounting to constructive fraud by which the other has been misled, 96 C 346
——as regards title to lands, one having knowledge or equal means of knowledge, cannot claim, 96 C 346
one must show that he was ignorant of true situation and had no convenient and available means of acquiring knowledge, 99 C 509
in pais only invoked to protect a party from loss; loss will not be presumed, but must be shown with reasonable certainty, 100 C 260
an estoppel cannot be based on hazy and indefinite notion, 100 C 261
act evidencing an intent if acted on by others entitled to guide their course by it, may ripen into an estoppel, 101 C 6
estoppel must ordinarily be intended deception in conduct or declaration or gross negligence amounting to constructive fraud which has misled other to his injury, 101 C 92
no estoppel exists unless party has changed course of action, 101 C 92
equitable estoppel defined; measure of proof required, 105 C 378, 500
no estoppel arises unless other party has been misled or his conduct influenced, 107 C 574
estoppel cannot be based on course of conduct not known and hence not relied upon, 115 C 393
estoppel involves acts and conduct of both parties and inquiry is as to whether or not fault of one induced the other to alter his position to his detriment, 118 C 548
fundamental rule in law of estoppel by conduct that person claiming it must show that he exercised due diligence to know the truth, 120 C 69
——and that he was destitute not only of knowledge of true state of things but also of any convenient or available means of acquiring such knowledge, 120 C 69
party claiming estoppel must show loss, 121 C 423
does not arise where plaintiff could have suffered no prejudice by defendant's conduct, 121 C 610
essential elements of, 122 C 419
modern estoppel in pais although of equitable origin is of equal application in courts of law, 122 C 513
equitable estoppel; there must generally be some intended deception in the conduct or declarations of party to be estopped, or such gross negligence on his part as amounts to constructive fraud, by which another has been misled to his injury, 123 C 61
is necessarily based on prejudice and in absence of prejudice does not exist, 123 C 469
one may become estopped to set up Statute of Frauds by conduct sufficient to constitute estoppel by usual rules, 124 C 507
modern estoppel in pais although of equitable origin is of equal application in courts of law, 124 C 508
rests upon misleading conduct of one party to prejudice of another, 126 C 47
since estoppel in pais is available only for protection of claims made in good faith, a party to be entitled to it is himself bound to exercise good faith, 126 C 101
cannot be invoked to compel municipality or its officers to do an act expressly forbidden by law, 127 C 360
doctrine of part performance as related to Statute of Frauds is based on estoppel, 128 C 619

§ 6. ——Express Representations and Admissions

declarations constituting waiver of prior attachment, 2 R 398
representations act as estoppel on party, when, 15 C 422
ordinary, casual remarks do not constitute, when, 17 C 361, 21 C 449, 33 C 584
inducing one to accept an accommodation note as a business note creates, 18 C 450
one selling property as his own is estopped to deny sole ownership, 19 C 341
mortgagee not estopped by declarations from setting up title against levying creditor, 21 C 449
positive assertions, though ignorantly made, constitute, 25 C 131, 57 C 264
declarations made ignorantly without intent to mislead or negligence, do not constitute, 29 C 111
——clerk calling the business "our business," 29 C 112
defendant estopped to claim benefit of delay in bringing suit, induced by his promises, 33 C 528
loose, casual conversation not intending to mislead, is not, 33 C 584

no liability for bona fide representations de financial ability of one inquired about; even though representations be in fact untrue, 40 C 38
declarations not misleading one acquainted with all the facts are not ground for, 46 C 476
tax sale; declarations *held* not to constitute an estoppel; if otherwise, party receiving them second-hand cannot set them up, 47 C 217
promise not inducing injurious change in one's condition does not operate as, 47 C 316
party not estopped by admission made in ignorance of his right, where induced by an innocent mistake of material facts, 50 C 87
——as where town supported pauper in another town under mistake, 50 C 87
——especially where both towns were equally ignorant of the facts, 50 C 87
representations of bank de indebtedness of company to inquirer about to indorse company's notes, *held* to estop bank, 57 C 262
——indorser's claim preferred to bank's claim for excess in insolvency proceedings, though not as to other creditors, 57 C 268
ignorance does not excuse if the person making representations should have known; or in due course of regular duty party should have ascertained, 57 C 264
if a person assumes to know he is estopped, 57 C 265
——also if knowing and intending that declaration should be acted upon, and it was so acted upon with resulting loss, 57 C 265
facts did not constitute, against garnishee from denying possession of funds of debtor, 58 C 84
representations procured by fraud are generally no ground of, though made with full intention that they should be acted on, 60 C 313
representations of opinion, not basis of; statement of effect of provision in lease, 75 C 500
estoppel to claim defects in tax list from so filling it out, 76 C 695
——as where husband gives in list as agent of wife, 79 C 630
right of party claiming, to rely on facts, and due diligence on his part; can rarely be based on promise, 78 C 664
one signing certificate of incorporation estopped to deny stock is fully paid as against a creditor, 82 C 560
when receipt does not estop plaintiff to show real transaction, 82 C 572
statement by holder of note to maker not to do anything hastily is mere advice, no estoppel, 83 C 341
not based on statements on which one had no right to rely or which was opinion or promissory, 84 C 504
no estoppel if acts and representation are not calculated to mislead and are not such as others ought to rely on, 87 C 100
no estoppel to plead Statute of Limitations unless conduct or representation was directed to the point of obtaining delay, 89 C 451
one claiming residence in particular place to give court jurisdiction cannot later deny it, 90 C 530
defendant's promises delayed plaintiff's action until he lost his rights and defendant received property; in proper case defendant might be estopped from claiming title, 92 C 416
principal by words and acts may estop himeslf from claiming benefit of contract made by agent, 93 C 460
one not estopped from amending pleading because through error he had accepted other party's statement as true, 94 C 311
real-estate broker who fraudulently represents to agent of owner that latter has employed him to sell property is estopped to deny it when called to account for fraud, 99 C 366
attaching creditor misled by statement of corporate agent as to number of shares owned by debtor, 100 C 255
——no estoppel created thereby in absence of evidence that creditor could have attached other property, 100 C 255
party not bound by allegations, if lack of knowledge as to the facts is pleaded, 105 C 560
representation of thickness of floor by buyer of machine does not estop him from claiming breach of warranty, 110 C 49
——since finding did not show knowledge of purpose of inquiry, its importance and that it would be relied on, 110 C 49
does not extend to acts or representations not naturally calculated to mislead and on which others have no right to rely, 114 C 45
basis of liability imposed on party putting out as his own produce goods produced by another, 115 C 249
informal permission given by building inspector to relay floor for use as a tea room *held* not sufficient to establish estoppel to action for injunction against nonconforming use, 115 C 588
defendant not estopped by reporting certificate of deposit as part of father's estate or by signing mutual distribution which included it, from setting it off against his own debt to insolvent bank, 118 C 42
——receiver did not change his position on strength of acts of defendant, 118 C 42

plaintiff bank not estopped from foreclosing mortgage by its conduct and representations concerning conversion of collateral of loan, 122 C 419
actual design or intent to deceive or defraud need not exist in the maker at the time of his representation or promise to afford basis for, 124 C 508
ordinarily doctrine of estoppel not applicable to promises concerning future; exception, 124 C 513

§ 7. ——Silence; Failure to Assert Right or Title

silence of party may sometimes constitute, 18 C 153, 25 C 258
——must have been intended to mislead and party must have been bound to speak, 25 C 260
where owner of property stands by and knowingly suffers a stranger to sell it in his own name, he is estopped to claim title to it afterwards, 20 C 97
flowage right on lease and annual rent; transfer of property, with appurtenances, by lessees; silence of lessors *held* not to estop as to flowage, 24 C 546
——silence as an estoppel, in relation to use and occupation of real estate, *held* unsatisfactory and objectionable, 24 C 547
party not estopped by innocent conduct from denying validity of tax, 33 C 405
——but previous silence and assent may create an estoppel, 33 C 406
surety on probate bond not estopped by his failure to communicate certain facts, 34 C 113
knowledge by one that another is buying on former's credit, and silence, creates, 39 C 19
——culpable negligence is an element of, as much as active misconduct, 39 C 20
mere assent by creditor of estate to widow's representation that there were no debts does not estop him, though in such belief widow had purchased shares of other heirs, 39 C 153
receiving in silence a statement from architect covering work and materials not in contract is no estoppel, when, 48 C 104
——silence as to extras then furnished is no authorization for further extras, 48 C 105
mere neglect to sue for five months *held* to create no estoppel, 48 C 257
release of portion of the land by mortgagee who had previously assigned debt; whether first assignee knowing of release and objecting, is estopped by his failure to notify second assignee, quaere, 49 C 188
right of Hartford County to use old state house for court purposes may rest on, 49 C 562
"he who is silent gives consent"; "he who can and ought to forbid and does not, commands it," 52 C 283
where defendant guaranteed all "drafts, overdrafts and such indebtedness" of a company, delay of six years after insolvency of company, in charging back unpaid discounted notes, *held* no bar to recovery on guaranty, 55 C 212
——nor was the fact that after insolvency the bank paid receiver of company a small balance then due the company, 55 C 212
——the defendant not being misled to his prejudice by anything done or omitted, a necessary element of an estoppel was wanting, 55 C 213
conduct of creditor at meeting of creditors *held* not to imply an assent to terms of trust deed, 55 C 571
——especially where deed provided that creditors might have nine months within which to assent, 55 C 572
——conduct of creditor *held* not to have estopped him from pursuit of all his remedies, 55 C 573
silence of payee after notice received of application of payment to unsecured debt, *held* a sufficient assent, 56 C 39
statement by one party to third person as to meaning of written contract in presence of other party and received without objection by him, estops him from denying such meaning, 56 C 348
——even though statement is in direct conflict with contract, 56 C 349
——subsequent conduct of nonobjecting party toward defendant acting on this understanding to be considered, 56 C 349
on a claim of lien for material, on buildings erected by husband on land of wife, wife not estopped by neglecting to object and give notice, 58 C 450
receipt of letter from promisee proposing changes in existing contract creates no estoppel, where promisor proceeds with contract in silence, 66 C 96
on facts, no estoppel as against claim of defects in layout of street, 68 C 408
by silence; must be with knowledge, 76 C 484, 586
to claim right to payment under assignment from permitting assignor to collect, 78 C 211, 679, 79 C 208
where landowner stands by while city spends money in reliance on his parol promise as to use of land for sewer, equity would compel him to abide by promise, 81 C 140
failure to appeal to board of relief no estoppel if no notice of assessment given, 87 C 230
where board of relief leads taxpayer to believe a certain action good, it is estopped afterwards to attack it, 90 C 154, 161

one whose property wrongfully attached does not have to claim it at once to avoid estoppel, 90 C 570

owner of property attached may be estopped from claiming it if he misleads officer as to ownership, 90 C 570

where one has no knowledge of the true situation, his silence is not estoppel, 91 C 410

mere appearance before board of assessment for highway layout does not prevent one from attacking validity of whole proceeding, 92 C 438

a pledgee or assignee who gives false credit to pledgor or assignor by failing to perfect rights may lose them, 93 C 129

property owner estopped to claim relief from assessment improperly made by standing by in silence till public improvement is completed, 96 C 143

bank may not claim estoppel against depositor who fails to notify it promptly of irregularities disclosed in statements and vouchers where its ignorance of true situation is due to its own negligence and wrongful conduct, 99 C 495

——as where it pays money to agent of depositor who had no right to receive it on check payable to its order drawn on another bank and presented by agent, 99 C 495

wife estopped to claim ownership of property sold in her presence by her husband with her knowledge and acquiescence, 101 C 449

——her conduct as effectual to transfer her title as though she signed bill of sale, 101 C 449

——she could not later bring action for conversion against vendee's attaching creditor, 101 C 449

cannot be based on failure to demand money which it was duty of other party to pay without demand, 111 C 549

when one, knowing rights, takes no steps to enforce them until condition of other party has changed so that if rights be then enforced he cannot be restored to former state, delay becomes inequitable and operates as estoppel, 116 C 617

waiver of assured's breach of co-operation clause, or estoppel to take advantage of it, may arise from insurer undertaking and continuing defense of action with knowledge of breach, 117 C 89

——rule applied in most cases where insured had knowledge of breach before trial, 117 C 89

——reason is that action in conducting defense is inconsistent with purpose to assert forfeiture and convincing of intent to waive it, 117 C 94

——cases where knowledge of breach was not obtained until the trial, recognize admissibility of finding of waiver of breach, at least as question of fact, 117 C 89

record *held* to disclose no act or omission which could be regarded as constituting consent to late filing of judgment, waiver thereof, or estoppel to take advantage of the error, 117 C 639

where silence relied on, existence of duty to speak is essential; no such duty exists where both parties have knowledge or access to knowledge, 121 C 423

——silence must be such as to mislead, 121 C 423

in suit for conversion by wrongful attachment, no estoppel of owner of property by failing to make claim at time that articles were exempt, 121 C 423

taxpayer who knew of layout of district, bill authorizing it, etc., and had constructive notice of boundaries by map on file, but made no claim its property was not within district, while four years' taxes were being assessed, *held* estopped from doing so now, 122 C 392

no basis for estoppel from claiming illegal building line fifteen years after it was established as it did not appear town was in any way prejudiced by failure to assert, 124 C 392

can be based on silence only when there is duty to speak, (dis.) 125 C 236

where holder of mortgage through recorded assignment relies on estoppel from conduct of another in withholding record of prior assignment, he must not only have had no knowledge but must have exercised reasonable diligence to acquire knowledge of real facts, 126 C 101

——what constitutes this reasonable diligence is question of fact, 126 C 101

upon facts, holder of recorded assignment of mortgage not precluded by negligence from benefit of estoppel barring holder of unrecorded prior assignment from enforcing it, 126 C 102

where, on amendment of succession tax law, statute provided for refund of taxes previously paid contrary to its provisions, taxpayer waiting eight years estopped to claim refund, 129 C 273

——specific prejudice need not appear, 129 C 278

§ 8. ——Acquiescence and Acceptance of Benefits

party precluded from disputing validity of organization of company where he participated in all proceedings, was director, etc., 22 C 435

one receiving land damages is estopped from setting up informality, when, 29 C 535

estoppel in pais applies to company retaining benefit of contract, 37 C 534

conditional subscription to stock; becoming director does not estop party from claiming benefit of his condition, 46 C 378
——nor mere presence at meeting where condition was infringed, unless party voted or advocated such infringement, 46 C 379
town may by acquiescence ratify unauthorized act of selectmen, 59 C 434
a director who has voted for and assented to illegal contract is not necessarily estopped as a stockholder from attacking its legality, 60 C 575
company receiving benefits of transaction is estopped from afterwards setting up ultra vires, 62 C 180
contract by unauthorized agent of borough for repair of gas pipes, duly reported to burgesses; contract *held* ratified and borough estopped, 63 C 521
estoppel from acquiescence in boundary line where deed is ambiguous, 64 C 421, 69 C 15
——equitable doctrine of acquiescence is quiescence under such circumstances that assent may be reasonably inferred from it, 69 C 30
estoppel to attack irregularities in corporate matters from participation therein, 66 C 17, 71 C 216, 72 C 665
estoppel to attack corporate irregularities from receiving dividends, etc., 72 C 658, 73 C 377, 84 C 96
to attack insolvency proceedings from participation therein, 72 C 709
estoppel by acquiescence in trespass rebutted by proof of want of means to bring action, 73 C 359
of tenant in common, by dedication by him, 73 C 359
to take advantage of breach of conditions from participating in it, 74 C 630
acceptance of rent and withdrawal of summary process creates no estoppel as to defenses pleaded in that action, 80 C 504
receiving goods after an action is commenced does not estop one from making further claim on indebtedness, 81 C 711
insurance company estopped when it accepts premium with knowledge of a threatened strike between application and delivery of policy from claiming breach of warranty that there was no strike, 83 C 393
receipt by benefit association of an assessment from one who has entered a forbidden calling does not estop its being set up, 84 C 356
by acquiescence in void distribution of estate, 88 C 686
acquiescence in distribution may estop distributee, 91 C 12
effect of acquiescence by heir on distribution erroneously subjecting land to life estate, 91 C 13
mere retention of services rendered before incorporation is no basis for estoppel, 92 C 266
landlord who has received rent otherwise than in cash may give notice that he will resume cash payments, 93 C 126
estoppel of landlord to claim forfeiture of lease where tenant made improvements on faith of its not being claimed, 93 C 638
insurance company estopped from claiming proof of loss unsworn to, if it accepted and acted on it, 94 C 118
accepting payments on one mortgage on certain premises cannot estop foreclosure of later mortgage on same premises when its condition is broken, 100 C 668
corporation not estopped to claim agreement to purchase its own stock of K was ultra vires by transaction in which K purchased, to which corporation was not a party and from which it received no benefit, 101 C 535
——nor by receipt of money and merchandise not connected with ultra vires agreement, 101 C 540
acceptance of unsworn proof of loss by insurance agent estops company to claim it defective, 101 C 586
stockholder of corporation who receives and retains money from sale by it of property to another corporation estopped to claim contract to be invalid, 101 C 713
contract within power of city may be enforced, though illegally executed, on principle of ratification or estoppel; but not contract which it has no power to make, 102 C 206
assessors have no power to compromise pending tax litigation; nor is city bound by their compromise under principle of ratification or estoppel, 102 C 206
by retaining premium for an unreasonable length of time after knowledge of mistake as to insured's interest, insurance company waives breach of provision that his interest is sole ownership, 102 C 371
receipts of benefits under illegal contract by corporation to purchase its own stock will not prevent its claiming illegality, 103 C 380
estoppel of third person who, in conversation with purchaser of real estate, makes no mention of claim and acquiesces in transfer, 104 C 285
stockholder who consents to and participates in benefit of contract by corporation with directors is estopped to question it, 104 C 684
——but if it calls for recurring payments he may withdraw consent and estoppel will cease, 104 C 684
——and it will not give validity to void contract, as one to make weekly payments to

directors without regard to earnings or debts of corporation, 104 C 684

consent of Michigan to parole of California prisoner to Connecticut, did not estop Michigan to ask for extradition, 105 C 374

lessor permitted lessee to sublet at great expense for alteration; *held* estopped thereafter to exercise option to prevent subletting, 105 C 488

acceptance of dividend checks by subscriber to stock, *held* not to estop her from denying power of corporation to issue the stock, 106 C 41

insurer estopped to claim defects in proof of loss made out and handed by its agent to insured for signature, 106 C 119

not effective to make valid strictly ultra vires act of municipal corporation, 107 C 337

——but where city authorized to grant or withhold consent to extension of street railway line, company by long enjoyment may be estopped to question condition requiring it to pay percentage of receipts to city, 107 C 337

by participating in defense in action against insured under policy of indemnity, insurer does not waive claim that loss not covered, if it gave notice at the time, 107 C 446

where contract beyond scope of power of public corporation, or illegal or forbidden, there can be no ratification or estoppel, 109 C 700

——but as to unauthorized contracts within power, retaining benefits is ratification, 109 C 700

school estopped to deny liability for unauthorized sanitary improvements which it used, where it might have continued to use old equipment, 109 C 700

acquiescence in past violation does not estop victim from enjoining a future continuation thereof, 115 C 70

one who joins in filing certificate of incorporation and enters into contracts in its name and while in active charge incurs obligations to others is estopped to deny its existence, 115 C 483

——such estoppel binds his personal representatives, 115 C 483

where certificate of organization was filed stating that certain persons were subscribers and stock had been fully paid for, one who signs it estopped to deny their right to certificates, 115 C 483

plaintiff not estopped in action for fraud in procuring release of his mortgage by later accepting worthless check and mortgage when he did not know of fraud at the time, 116 C 375

appellant foreclosed from claiming transfer of assets from one bank to other void by course of conduct in acquiescing in it, accepting payments from transferee, and seeking to avoid transfer only when latter went into receivership, 116 C 617

where insurer delivers policy and accepts premium knowing of facts which would invalidate it, it may be estopped from asserting breach, 118 C 538

where consent was given to foreclose on promise that property would be reconveyed and mortgagor made extensive improvements in reliance on promise, mortgagee estopped to set up Statute of Frauds, 124 C 507

——in this situation estoppel is coextensive with doctrine of partial performance; may be availed of in action at law for breach of promise, 124 C 515

if insurer, knowing statements in application for reinstatement of policy to be untrue, reinstates it, it waives cause of avoidance and is estopped from taking advantage of it, 128 C 591

——possession by insurer of knowledge of invalidating facts is essential prerequisite to such waiver or estoppel, 128 C 591

——but where applicant certified that she was in good health and actually had cancer which neither she nor insurer knew, latter did not waive defense of material misrepresentation and was not estopped, 128 C 592

entry and payment of rent under lease may constitute such part performance as to estop lessor from setting up defense of Statute of Frauds, 128 C 616

——so where plaintiffs claimed injunction ordering defendant to renew lease in accordance with its terms, defendant estopped to set up Statute of Frauds where she failed to execute and record lease as she promised and permitted plaintiffs to occupy premises and pay rent, 128 C 616

§ 9. ——Clothing Another with Apparent Title or Authority

factor not estopped from insisting on lien though holding out principal as owner, 9 C 421

false position as regards title may work an estoppel, 12 C 482

debtor estopped by sale by his fraudulent grantee in his presence to bona fide purchaser, 37 C 152

wife assigned insurance policy in blank to husband to be used as collateral for a loan; *held* she could not deny power of husband to fill up blank, 52 C 590

——but where husband used policy for a different purpose wife was not bound, 52 C 586

vendor making sale absolute in legal effect cannot claim it was conditional to prejudice of vendee's creditors, 58 C 367

claim of partnership based on conduct rests on estoppel; whether grounds for exist is a question of fact, 58 C 413

a partner inducing payee of note to part with a valuable consideration on the belief that he intended to be bound by the signature, will be estopped to deny liability, 61 C 49

where husband innocently mingles his wife's goods with his own, he can claim his, as against attachment in action against her, 68 C 1

by permitting brother to use horse and wagon in his business, where they were attached as his property, 69 C 84

to attack title of one who buys on reliance upon apparent ownership of property, 72 C 504

to avoid acts of one held out as agent, 76 C 508, 78 C 211, 79 C 227

——where corporation permits its agent to do certain acts, 69 C 565

estoppel of corporation by acts of general agent, 79 C 388

evidence of an agent as to his authority not admissible unless his former acts are such as to create an estoppel, 82 C 448, 685, 693

one who permits another to represent himself as owner of real estate cannot deny title to one extending credit to him on this basis, 87 C 99

married woman subject to equitable estoppel who places title of real estate in her husband, 87 C 99

purchaser of real estate who permits another to take and hold record title for years, estopped to deny his title against one who relied on it, 87 C 99

real owner of stock not estopped from asserting her right against creditor who had not relied on legal title, 87 C 601

no estoppel when it does not appear that one acted in reliance on a supposed relationship between the parties, 89 C 633

agency by, cannot be invoked by one who has simply relied on alleged agent's statement, 99 C 506

town will not be estopped to disavow contract where school officer in excess of authority informs one who has made offer that it has been accepted, 99 C 701

estoppel of owner who permits record title to stand in name of another; creditor must rely on record and show due diligence, 105 C 378

where husband left land in wife's name no estoppel as regards obligee in bastardy bond signed by her, 105 C 378

——silence of real owner as creating estoppel, only when relied on by other party to his detriment, 105 C 382

conditional vendor estopped to assert title against purchaser from vendee with apparent authority to resell, 107 C 365

where agent was held out for two years as having authority to negotiate checks, principal estopped to deny authority, 110 C 635

——especially as principal had benefit of proceeds, 110 C 635

where plaintiff sold article to agent of partnership, extending credit to him alone as principal, former partner not estopped to show partnership terminated before transaction, 115 C 389

effect of failure of partner to give notice of dissolution of partnership to one dealing with it; of failure to give notice to agent, 115 C 389

in New York though mortgagee allows article to remain in mortgagor's possession, former not estopped to assert title against purchaser if mortgagor without authority to sell, 122 C 100

§ 10. ——Negligence; Injury to One of Two Innocent Persons

knowledge by one that another is buying on former's credit, and silence, creates, 39 C 19

——culpable negligence is an element of as much as active misconduct, 39 C 20

savings bank not estopped by its conduct from showing the fraud practiced upon it, 60 C 312

by negligence or omission; intent essential, and is question of fact, 69 C 79

by permitting brother to use horse and wagon in his business, where they were attached as his property, 69 C 84

estoppel of corporation by negligence in permitting issuance of defunct bonds, 72 C 576

failure of one to whom a policy of insurance has been assigned to examine it, *held* to estop assignee from denying who the sole beneficiary was, 87 C 500

leaving paid note in hands of holder after payment does not estop maker from setting up alteration by holder as against one who innocently purchased it, 89 C 592

holder of blanket mortgage who released as to one lot and took new mortgage but neglected to obtain waiver of liens estopped from asserting priority, 109 C 343

husband not estopped from recovering from corporation which transferred stock forgerously indorsed by wife, 114 C 172

bank may escape liability for paying forged checks by showing it was not negligent and depositor was; estoppel, 115 C 50

§ 11. ——Estoppel by Contract

party executing bill of sale cannot deny an interest, 1 R 501

successor to party to agreement for division of real estate estopped to contest validity of division, 17 C 346

agreement with debtor to buy suit and prosecute; debtor estopped to deny purchaser's title, 26 C 541

partner indorsing note in firm name after dissolution, estopped to deny that title passed, 28 C 361

party estopped by answers in insurance policy from claiming no insurable interests, 39 C 105

answers in insurance policy *held* conclusive as to insurable interests, 39 C 105

sale of part of a mass; no removal; resale and part removal by second vendee; original owner estopped to deny that title passed, and to claim lien, 39 C 419

wife in fact signed note as surety for her husband; *held* she was not estopped by recitals to contrary in note, 56 C 151

statement in contract of infant as to his age, at instance of agent of person claiming estoppel, creates none, 80 C 310

one who accepts transfer of business jointly to himself and another estopped to claim under previous bill of sale of business to himself alone, 101 C 517

agreement de reinspection and reacceptance of earlier defective deliveries did not deprive buyer of privilege of repudiating balance of contract, 102 C 529

none as against bringing action for conversion of note from receipt of money under agreement involving its ultimate surrender, 107 C 575

where wife signs agreement to sell land as "authorized agent" of husband, but tells buyer she is not and agreement not good unless approved by him, she is not estopped to deny agency, 107 C 612

mortgagee's president assured receiver of mortgagor that he would not bother him for payments on principal for couple of years; *held* assurance given for protection of receiver only and not binding agreement as to corporation which took over property for benefit of stockholders of mortgagor, 117 C 218

——nor could such corporation claim benefit of it by way of waiver or estoppel, 117 C 218

——quaere whether mortgagee would be estopped to take possession as against receiver, 117 C 226

of agent who has contracted in own name without disclosing representative capacity, to deny that he is the principal, 127 C 66

heir who made compromise agreement de distribution under codicil, estopped to make adverse claim; same as to his children, 127 C 122

§ 12. ——Miscellaneous Particular Cases

defendant estopped to show he had combined with plaintiff to defraud, 8 C 62

creditor receiving money on foreign attachment due from debtor as purchase money for land conveyed is not estopped to show that deed by original debtor was fraudulent, 9 C 485

acts of mortgagee in possession of goods; did not estop him from bringing suit against officer who attached them, 20 C 563

agent who has sold land estopped to deny principal's title, 26 C 373

party not estopped by admission made in ignorance of his rights, 28 C 395

——applies to surety on bond who had promised to pay, 28 C 395

party estopped to deny agent's authority to submit to arbitration, when, 29 C 575

right to object to oath taken may be lost by laches or waiver, constituting, 33 C 153

director of insolvent company estopped from setting up false representations, in action on his note for stock, 38 C 510

garnishee not estopped on scire facias from pleading defective service, though waived by original debtor, 40 C 405

town estopped from setting up illegality of vote to guarantee railroad bonds, 42 C 465

creditor levying on equity and allowed whole amount of mortgage debt in appraisal is estopped to deny validity of incumbrance, 46 C 11

record by clerk that town meeting was "legally warned and held" of no effect where recorded warning shows otherwise, 51 C 29

legatee of income contesting will is not estopped thereby from claiming income accrued during contest, 51 C 212

plaintiff was notified by defendant of proposed action and requested to sue; plaintiff not estopped for not suing until defendant committed the wrong, 51 C 310

grantor of equity to dummy to escape taxes, estopped from claiming that assessment of tax to dummy was illegal, in suit by mortgagee who had foreclosed and paid the tax, 51 C 430

——one cannot set up or rely on his own fraud in defense, 51 C 431

on hearing in damages on condemnation of land of one railroad by another railroad, notice to president of company *held* notice to company, 52 C 281

——and where president appeared as trustee purposely kept concealed, 52 C 282

of bondholders only, the company was estopped from disputing appraisal, though legal title was in company, 52 C 282

——especially where title of company was where donee of gift, after death of donor, signs receipt for property as administratrix, she can still claim under gift, 70 C 342

where time limited for bringing of action expired not because of negotiations with defendant but because of plaintiff's own inadvertence or mistake, defendant not estopped to rely on statute as defense, 74 C 684
to attack validity of process from procuring its issuance, 77 C 183
estoppel exists against one who has waived provisions of a contract in regard to payment, 82 C 383
no estoppel in favor of creditors who are presumed to know what incorporation certificate contains, 82 C 417
one who waives his right to insist on a building being constructed within certain time is estopped, 82 C 427
no estoppel where one credits an item under mistake without injury, 82 C 572
effect of recognition by one grand lodge of another set off from it, 83 C 241
facts *held* not to show estoppel by conduct from collecting notes, 83 C 332
action of landowners *held* to estop them from claiming they had never given a right of way, 83 C 581
donee not estopped from claiming title against third parties who know circumstances, 85 C 685
because plaintiff sold land, he could not anticipate that it would be used so as to injure him and thus estop him from damages, 86 C 598
no estoppel to deny being a stockholder where one promises broker to take all of stock issue not otherwise sold, 87 C 138
material man not estopped from foreclosing lien by sale of land before certificate of lien filed, 87 C 316
one estopped from claiming that a right was not exercised in time if he prevented it by injunction, 87 C 528
contracts made before incorporation enforced on principle of estoppel, 88 C 233
father suing as daughter's next friend estops himself from suing for damages for loss of services, 88 C 265
filing of intervening petition by creditor not acted on does not estop him to redeem a prior mortgage, 89 C 59
holding one's self out as a partner, 89 C 633
insurance company can estop itself from claiming breach by waiving it, 90 C 202
practice of admitting life members to a society estopped trustees from questioning its legality, although charter did not provide for their admission, 91 C 537
corporation and its managers estopped to deny right of members to participate in dissolution, 91 C 537
corporation estopped to question authority of directors to issue stock by bringing action to recover its par value, 92 C 266
where in taking land proper steps had not been taken, landowner could take exception if he was not estopped, 92 C 432
State not estopped from claiming reimbursement due for care of pauper because the balance of payment was made by conservator, 93 C 571
one not estopped from amending bill of particulars, where he had accepted, through ignorance, the erroneous facts of other party, 94 C 311
will protect one who purchases certificate of stock without knowledge of defect of title, 94 C 608
beneficiary not estopped to claim that her release did not include secret commissions of trustee if she did not know of them when she gave release, 95 C 589
mere knowledge of landowner that adjoining proprietor is erecting building will not estop him from later remedy against encroachment by it, 96 C 346
reliance on promise of lessor to extend time to renew lease kept by him is no basis for an estoppel; promise was beneficial to lessee and he was not misled to his prejudice, 96 C 410
carrier estopped by acceptance of goods for transportation to deny obligations as carrier, 97 C 1
mistaken attempt to enforce remedy to which person has no legal right does not preclude him from seeking proper, though inconsistent remedy; assertion of mechanic's lien to which plaintiff had no legal right, 101 C 1
where lienor who has filed general waiver could not have changed his course of conduct because another had received consideration for later limited waiver, this cannot create estoppel, 101 C 92
that public corporation had funds in hand to pay party it had agreed to indemnify had claim been made with proper diligence, creates no estoppel, 102 C 496
——no misrepresentation or concealment by plaintiff which induced defendant in reliance thereon to forego any advantage, 102 C 496
devisee of farm not estopped to claim it exempt from debts of business carried on by executors when she did nothing actively to induce them to carry it on, 103 C 353
purchaser of car not estopped to claim that he had bought it of partnership rather than of individual, 103 C 436
broker pretending to act for and selling property to buyer where he himself has bargained for it at a lower price is estopped, 104 C 258
witness to lease not presumed to know its contents; not estopped to assert its in-

validity if he purchases property after recording, 104 C 291

actual knowledge of defectively executed contract of conditional sale by creditor of vendee creates estoppel, 104 C 559

insurance by owner against risks of defendant's acts, *held* not to estop claim for negligence, 105 C 644

pursuit of wrong remedy in another State does not bar action for proper relief in this State, 106 C 41

bringing action on unauthorized contract of agent of corporation to repurchase stock sold by it is not estoppel to suit for fraud in sale, 106 C 42

——or to suit to cancel stock because corporation not authorized to issue it, 106 C 42

contracts made before incorporation enforced on principles of estoppel, 107 C 216

extinguishment of easement by parol license does not rest on estoppel; estoppel merely indicates intent, 107 C 656

of town from refusing to pay contract where it failed to charge withheld percentages against appropriation so that it was exceeded, 111 C 510

——but use of highways built under unauthorized contract would not estop town from refusing to pay for them, 111 C 520

acceptance of gift of land to public presumed where it is of common convenience and necessity; giver estopped to recall it, 112 C 340

one who secures immediate release, before tender of bond, of attachment of lot of small articles cannot attack attachment for failure of officer to inventory them, 112 C 370

under statute requiring notice to compensation commissioner of insurance issued or cancelled, insurer estopped to deny truth of record whether or not particular employee has examined it, 113 C 131

one making election between inconsistent remedies is estopped to pursue another adversely affecting other party, 114 C 378

plaintiff filed general claim in bankruptcy "without prejudice" and sued trustee after assets were distributed; *held* he was estopped, 114 C 378

where mortgages were given at time title to land was conveyed under previous bond for deed, mortgagees *held* not estopped to claim precedence over liens in absence of showing that those claiming them had been induced to act otherwise than they would have, 115 C 364

participation by stipulation in foreclosure judgment not recognition by agreement or estoppel that award for taking of the land should be apportioned among parties, 115 C 436

where conditional vendor brought suit under terms of contract for balance due upon resale after repossession he is not estopped, 116 C 364

where deeds not recorded until after bank was restrained from doing business, and no deposits were made in reliance on properties belonging to it, no foundation for claim of estoppel, 117 C 58

finding that C was estopped to deny mother's ownership of car and fact that she had attachable interest in it, is finding of immaterial fact where plaintiff in replevin did not derive title through C, 117 C 159

waiver by members authorizing trustee of voluntary association to turn over funds to broker as estoppel against those signing it, 118 C 524

where plaintiffs not misled or induced to act differently by failure of company to apply seniority rule in a few instances, there was no ground for estoppel, 119 C 622

where both defendant's grantor and her agent were charged with notice that title to tracts stood in name of M, and agent actually knew this from former transaction, yet accepted deed from grantor who got title from M's son, *held* defendant could not interpose estoppel, 120 C 69

action of building inspector in requesting appellants to await outcome of pending suit, etc., did not estop town from relying on fact that proposed building could not be constructed within one year from destruction of old, as limited by regulations, 120 C 450

in action to recover money loaned, estoppel in pais not applicable to case, 120 C 618

equitable estoppel as applied to one failing to record assignment of mortgage, 121 C 263 and see MORTGAGES

an implied dedication of land to public rests on common-law doctrine of equitable estoppel, 121 C 381

no ratification or estoppel as to agreement void for illegality or beyond scope of powers conferred upon a public corporation or board or commission thereof, 122 C 660

where equitable estoppel relates to real estate, essential that party claiming it was himself not only destitute of knowledge of true state of title but also of means of acquiring knowledge, 123 C 61

——where B managed own and wife's adjoining land, and erected garage on own lot encroaching on wife's lot, *held* B could invoke no equitable estoppel against her upon which his successors in title could rely, where wife sued for removal of encroachment, 123 C 61

——nor could successors claim estoppel, since they were not misled, 123 C 61

attacking change in zoning classification by independent proceeding rather than appeal, 123 C 469 and see ZONING

carrier cannot, by any act, estop itself from exacting lawful freight rate, 125 C 251

where debtor was not defrauded by acceptance of payment of part due under executory accord, creditor not estopped to claim full amount, 126 C 44

defendant cannot claim estoppel against plaintiff asserting rights under note where former not misled to disadvantage in accepting note in form in which it was made, 126 C 557

there was no waiver or estoppel where party paid for gasoline at higher price than contract called for upon definite promise that overcharge "would be fixed up," 127 C 291

though inhabitants and plaintiff believed premises within zoned area, because of lack of prejudice to anyone from failure to have issue determined, no basis for estoppel, 127 C 409

failure of insurer to enter appearance for assured where no evidence that latter knew of failure, no estoppel or waiver of defense of assured's failure to cooperate, 127 C 693

——same as to certain statements by insurer's representative in absence of evidence that they came to knowledge of assured, 127 C 693

insurer of workmen's compensation estopped to deny truth of formal record of report to board of commissioners, 127 C 708

municipal board cannot by giving hearing to removed officer give him status contrary to terms of governing law, 128 C 39

one who accepts deed subject to, and who assumes payment of, mortgage to certain amount is estopped to dispute that recital, 129 C 194

——estoppel not one by deed but in pais, 129 C 194

——but estoppel does not arise where amount of mortgage does not enter into purchase price, 129 C 194

plaintiff is in no position to insist that defendants estopped to deny recital in deed that mortgage was certain amount which was induced by its own misrepresentation of fact, 129 C 194

grantor estopped to set up taking of his land by condemnation, of which he had notice, as reason for invalidating his own deed of it to highway commissioner, 129 C 246

§ 13. Persons Affected by Estoppel

an estoppel against an estoppel mutually destroy each other, 1 C 12

embraces only the parties and their privies, 11 C 352

acts do not estop one not in privity with them, 23 C 55

bystander overhearing and acting on proposition cannot avail himself of it, 44 C 272

contract of A not to contest will does not estop heir of A who is an heir of the testator in his own right, 49 C 457

a distinction exists between a man's binding himself and binding his estate, 54 C 100

——the former may be by conduct which will estop him; the latter only by deed express or implied, 54 C 100

binds privies, 76 C 484, 84 C 512

corporation acting within its lawful powers is subject to same principles as individual, 97 C 584

——retaining proceeds of loan secured by agent in breach of instructions, 97 C 584

client not bound by attorney's statement unless he knows and assents thereto, 101 C 92

purchaser from lessor's heirs with notice that lessor had waived right to prevent subletting, *held* bound thereby, 105 C 488

arising from broker incorrectly informing customer of status of margin account not applicable to rights of parties under subsequent agreement, 113 C 401

estoppels arising out of representations, at times extend to those in privity of estate with person to whom they are made, 117 C 218

——but such privity does not in itself constitute person in privity as successor to rights of one to whom representations were made, 117 C 218

assistant city clerk cannot waive compliance with statute by accepting defective notice of injury or thereby estop city from taking advantage of failure to meet statutory requirements, 117 C 398

binding insurer to recognize rights of beneficiary of policy, 120 C 633

§ 14. Pleading and Evidence

verdict constituting estoppel must be specially pleaded, 4 D 277

record of prior judgment must alone show that same point was decided, 4 C 281

plea of, should be strictly construed, 5 C 132

estoppels must be pleaded, 11 C 250, 18 C 97

——if no opportunity to plead, may be given in evidence, 11 C 250, 18 C 97

plea of, to action of ejectment, is allowable, 12 C 371

must be pleaded with extreme precision, 12 C 372

estoppel by deed may be shown without pleading it, when, 15 C 176

defendant may take advantage of matter which would have estopped him had not plaintiff alleged it as true, 16 C 535

former judgment is pleadable in bar, or admissible as evidence under general issue, 18 C 98
estoppel in pais, when not required to be pleaded, 28 C 536
garnishee is not estopped on scire facias from pleading defective service; though waived by the principal debtor, 40 C 405
burden of proving rests on party setting up, 46 C 379
where widow allowed land in which she had right of dower, to be sold as unincumbered, *held* that Probate Court could not consider her estopped on her application for assignment of dower, 53 C 36, 63 C 340
estoppel to deny agency need not be pleaded where complaint is based on actual authority though estoppel enters into decision, 66 C 156
estoppel by bond sufficiently pleaded if it is apparent on face of bond which is set out, 68 C 495
necessity of pleading, 73 C 387, 78 C 276, 79 C 395
advantage of estoppel in pais taken without pleading, 83 C 394, 84 C 501
estoppel in pais does not shut out but lets in whole truth so that matter may be determined irrespective of legal rights, 84 C 501
not to be extended; necessary facts must be clearly proved, 87 C 118
pleader must allege that he was misled to his injury; in that respect estoppel is distinguished from waiver, 90 C 202
burden of proof is on party claiming estoppel, 101 C 534
in pais may be proved though not pleaded, 101 C 586, 106 C 119
the admission of evidence for purpose of showing an equitable estoppel does not violate the parol evidence rule, 118 C 538
plaintiff can prove estoppel in pais against defendant's taking advantage of Statute of Frauds without pleading it, 124 C 507
——whether or not all essential elements of estoppel were set forth therefore immaterial and demurrer properly overruled, 124 C 507

EVICTION

See Ejectment; Landlord and Tenant § 15; Ouster

University of
Connecticut
Libraries